

## MONTANA LEGISLATIVE HISTORY

Chapter 550 19 97Bill H \_\_\_\_\_ S 48 Original bill & history X cH. Committee on SELECT CORRECTIONSHearing Date(s) 2/18 X cEXEC ACTION 3/10 X c

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Date Out \_\_\_\_\_ c

S. Committee on JUDICIARYHearing Date(s) 1/10 X cEXEC. ACTION 1/29 X c

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Did this bill originate in an interim committee? \_\_\_\_ Yes \_\_\_\_ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

## **LEGISLATIVE HISTORIES SINCE 1997**

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

2/05 SIGNED BY GOVERNOR  
CHAPTER NUMBER 6  
EFFECTIVE DATE: 02/05/97

SB 48 INTRODUCED BY SPRAGUE

LC0229 DRAFTER: FOX

REVISE THE YOUTH COURT ACT

BY REQUEST OF JUVENILE JUSTICE & JUVENILE MENTAL HEALTH STUDY  
COMMISSION

|       |                                                                      |    |    |
|-------|----------------------------------------------------------------------|----|----|
| 12/24 | INTRODUCED                                                           |    |    |
| 12/30 | FISCAL NOTE REQUESTED                                                |    |    |
| 1/03  | REFERRED TO JUDICIARY                                                |    |    |
| 1/06  | FIRST READING                                                        |    |    |
| 1/10  | HEARING                                                              |    |    |
| 1/16  | FISCAL NOTE RECEIVED                                                 |    |    |
| 1/16  | FISCAL NOTE PRINTED                                                  |    |    |
| 1/29  | REVISED FISCAL NOTE REQUESTED                                        |    |    |
| 1/30  | COMMITTEE REPORT—BILL PASSED AS AMENDED                              |    |    |
| 2/05  | REVISED FISCAL NOTE RECEIVED                                         |    |    |
| 2/06  | REVISED FISCAL NOTE PRINTED                                          |    |    |
| 2/07  | 2ND READING PASSED                                                   | 43 | 5  |
| 2/08  | 3RD READING PASSED                                                   | 46 | 4  |
|       | TRANSMITTED TO HOUSE                                                 |    |    |
| 2/10  | FIRST READING                                                        |    |    |
| 2/10  | REFERRED TO CORRECTIONS SELECT COMMITTEE                             |    |    |
| 2/18  | HEARING                                                              |    |    |
| 3/11  | COMMITTEE REPORT—BILL CONCURRED AS AMENDED                           |    |    |
| 3/13  | 2ND READING CONCURRED AS AMENDED                                     | 68 | 31 |
| 3/14  | REVISED FISCAL NOTE REQUESTED                                        |    |    |
| 3/15  | 3RD READING CONCURRED                                                | 67 | 30 |
|       | RETURNED TO SENATE WITH AMENDMENTS                                   |    |    |
| 3/18  | REREFERRED TO JUDICIARY TO CONSIDER HOUSE<br>AMENDMENTS              |    |    |
| 3/20  | REVISED FISCAL NOTE RECEIVED                                         |    |    |
| 3/21  | REVISED FISCAL NOTE PRINTED                                          |    |    |
| 3/25  | HEARING                                                              |    |    |
| 3/25  | COMMITTEE REPORT—RECOMMENDED HOUSE<br>AMENDMENTS BE REJECTED         |    |    |
| 3/26  | 2ND READING AMENDMENTS NOT CONCURRED                                 | 50 | 0  |
| 3/27  | FREE CONFERENCE COMMITTEE APPOINTED                                  |    |    |
| 4/07  | HEARING                                                              |    |    |
| 4/09  | FREE CONFERENCE COMMITTEE REPORT NO. 1                               |    |    |
| 4/11  | 2ND READING FREE CONFERENCE COMMITTEE<br>REPORT NO. 1 ADOPTED        | 50 | 0  |
| 4/12  | 3RD READING FREE CONFERENCE COMMITTEE<br>REPORT NO. 1 ADOPTED        | 46 | 2  |
|       | HOUSE                                                                |    |    |
| 4/03  | FREE CONFERENCE COMMITTEE APPOINTED                                  |    |    |
| 4/09  | FREE CONFERENCE COMMITTEE REPORT NO. 1                               |    |    |
| 4/15  | 2ND READING FREE CONFERENCE COMMITTEE<br>REPORT NO. 1 ADOPTED        | 90 | 6  |
| 4/16  | 3RD READING FREE CONFERENCE COMMITTEE<br>REPORT NO. 1 ADOPTED        | 82 | 17 |
| 4/25  | SIGNED BY PRESIDENT                                                  |    |    |
| 4/30  | SIGNED BY SPEAKER                                                    |    |    |
| 4/30  | TRANSMITTED TO GOVERNOR                                              |    |    |
| 5/07  | SIGNED BY GOVERNOR<br>CHAPTER NUMBER 550<br>EFFECTIVE DATE: 07/01/97 |    |    |

## SENATE BILL NO. 48

INTRODUCED BY SPRAGUE

BY REQUEST OF THE JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE YOUTH COURT ACT; REPLACING THE CATEGORY OF "YOUTH IN NEED OF SUPERVISION" WITH "YOUTH IN NEED OF INTERVENTION"; INCLUDING SCHOOLS UNDER CONFIDENTIALITY DISCLOSURE EXCEPTIONS FOR DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RECORDS; CREATING YOUTH ASSESSMENT PLACEMENTS, FAMILY ASSESSMENTS, AND ASSESSMENT OFFICERS TO EVALUATE THE STRENGTHS AND NEEDS OF A YOUTH AND THE FAMILY OF A YOUTH BROUGHT TO THE ATTENTION OF YOUTH COURT; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO LICENSE YOUTH ASSESSMENT PLACEMENTS; REDEFINING "DELINQUENT YOUTH"; DEFINING "HABITUAL TRUANCY", "VICTIM", "YOUTH IN NEED OF INTERVENTION", AND OTHER TERMS; ALLOWING SHORT-TERM DETENTION FOR UP TO 10 WORKING DAYS; ALLOWING THE APPOINTMENT OF JUDGES PRO TEMPORE OR SPECIAL MASTERS FOR YOUTH COURT PRELIMINARY MATTERS; ALLOWING A COUNTY ATTORNEY TO MAKE A MOTION FOR LEAVE TO FILE AN INFORMATION DIRECTLY IN DISTRICT COURT FOR CERTAIN YOUTH OFFENSES; ADDING ACCOUNTABILITY AS AN OFFENSE THAT CAN BE FILED IN DISTRICT COURT; CLARIFYING DUE PROCESS RIGHTS IN THE TRANSFER OF CASES TO DISTRICT COURT AFTER PROSECUTION; ADDING ASSESSMENT PLACEMENTS FOR PLACEMENTS PRIOR TO ADJUDICATION AND FOR DISPOSITION; PROVIDING CRITERIA FOR PLACEMENT IN AN ASSESSMENT; PROVIDING THE TYPES OF PLACEMENTS ALLOWED FOR ASSESSMENT; GENERALLY REORGANIZING DISPOSITION STATUTES; LIMITING THE USE OF AN INFORMAL CONSENT ADJUSTMENT AND A CONSENT DECREE TO A SINGLE FELONY EACH; PROVIDING GRADUATED SANCTIONS; PROVIDING ADDITIONAL SANCTIONS; ADDING PROVISIONS THAT PARENTS AND GUARDIANS MAY BE HELD RESPONSIBLE FOR CONTRIBUTING TO THE COSTS OF ADJUDICATION, DISPOSITION, SUPERVISION, AND MEDICAL COSTS OR VICTIM'S COUNSELING AND DAMAGES; ALLOWING DETENTION FOR UP TO 3 DAYS FOR AN INFORMAL CONSENT ADJUSTMENT; PROVIDING THAT PERSONS BE ADVISED OF OBLIGATIONS UNDER THE ACT; ALLOWING DETENTION FOR A CONSENT DECREE FOR UP TO 10 DAYS; REQUIRING THAT A YOUTH MUST ADMIT GUILT FOR CHARGES OF AN OFFENSE IN ORDER FOR A CASE TO BE DISPOSED OF BY A CONSENT DECREE; ADDING A PROVISION THAT SCHOOL REPRESENTATIVES ON YOUTH PLACEMENT

1 COMMITTEES AND AUXILIARY TEAMS BE PERSONS WITH PERSONAL KNOWLEDGE OF THE CHILD,  
2 AMENDING SECTIONS 7-6-501, 20-5-321, 20-7-422, 23-5-158, 41-3-205, 41-3-1101, 41-3-1102  
3 41-3-1103, 41-3-1114, 41-3-1122, 41-3-1132, 41-5-103, 41-5-201, 41-5-203, 41-5-204, 41-5-205,  
4 41-5-206, 41-5-208, 41-5-301, 41-5-303, 41-5-304, 41-5-305, 41-5-306, 41-5-401, 41-5-403, 41-5-501  
5 41-5-511, 41-5-515, 41-5-521, 41-5-522, 41-5-523, 41-5-524, 41-5-525, 41-5-530, 41-5-533, 41-5-603,  
6 41-5-605, 41-5-802, 41-5-1004, 41-5-1008, 41-5-1104, 41-5-1105, 45-5-624, 45-5-637, 46-18-256,  
7 46-24-207, 52-2-211, 52-5-101, 53-1-201, AND 53-1-203, MCA; REPEALING SECTION 41-5-310, MCA,  
8 AND PROVIDING AN EFFECTIVE DATE."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 **Section 1.** Section 7-6-501, MCA, is amended to read:

13 **"7-6-501. Definitions.** As used in 7-6-502 and this section, unless the context requires otherwise,  
14 the following definitions apply:

15 (1) "Detention" means the holding or temporary placement of a youth in a facility other than the  
16 youth's own home for the purpose of ensuring the continued custody of the youth at any time after the  
17 youth is taken into custody and before final disposition of ~~his~~ the youth's case.

18 (2) "Juvenile detention program" means services to provide for the lawful detention or shelter care  
19 of youth. The term includes:

20 (a) youth evaluations ordered by the court under 41-5-523; and

21 (b) programs for the transportation of youth to appropriate detention facilities or shelter care  
22 facilities.

23 (3) "Local government" has the same meaning as provided in 7-12-1103.

24 (4) "Shelter care" has the same meaning as provided in 41-5-103.

25 (5) "Youth" means an individual who is less than 18 years of age who is alleged to be a delinquent  
26 youth or youth in need of ~~supervision~~ intervention as those terms are defined in 41-5-103."

27

28 **Section 2.** Section 20-5-321, MCA, is amended to read:

29 **"20-5-321. Attendance with mandatory approval -- tuition and transportation.** (1) An out-of-district  
30 attendance agreement that allows a child to enroll in and attend a school in a Montana school district that

1 is outside of the child's district of residence or in a public school district of a state or province that is  
2 adjacent to the county of the child's residence is mandatory whenever:

3 (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from  
4 the school the child would attend in the resident district and:

5 (i) the resident district does not provide transportation; or

6 (ii) the district of residence provides transportation and is not within the same county as the child's  
7 school district of choice;

8 (b) the child resides in a location where, due to road or geographic conditions, it is impractical to  
9 attend the school nearest the child's residence;

10 (c) the child is a member of a family that is required to send another child outside of the elementary  
11 district to attend high school and the child of elementary age may more conveniently attend an elementary  
12 school where the high school is located, provided that the child resides more than 3 miles from an  
13 elementary school in the resident district or that the parent is required to move to the elementary district  
14 where the high school is located to enroll another child in high school;

15 (d) the child has been adjudicated by a court of competent jurisdiction to be an abused or neglected  
16 child, as defined in 41-3-102, or a youth in need of ~~supervision~~ intervention or a delinquent youth, as  
17 defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the  
18 department of public health and human services and, as a result of the placement, is required to attend  
19 school outside of the child's district of residence; or

20 (e) the child is required to attend school outside of the district of residence as the result of a  
21 placement by a state agency or parent in a group home licensed by the state or an order of a court of  
22 competent jurisdiction.

23 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have  
24 a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall  
25 complete an out-of-district attendance agreement in consultation with an appropriate official of the district  
26 the child will attend.

27 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for  
28 tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

29 (c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver  
30 must be applied equally to all students.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of choice shall approve the out-of-district attendance agreement and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

(4) Unless the child is a child with disabilities who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

**Section 3.** Section 20-7-422, MCA, is amended to read:

**"20-7-422. Out-of-state placement of children with disabilities -- payment of costs.** (1) In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana.

(2) Except as provided in subsection (3), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(3) Whenever a child with disabilities who is in need of special education and related services is adjudicated by a court of competent jurisdiction to be an abused or neglected child, as defined in 41-3-102, or a youth in need of ~~supervision~~ intervention or delinquent youth, as defined in 41-5-103, and is placed by a state agency in an out-of-state private residential facility, the superintendent of public instruction shall negotiate with:

(a) the provider for the amount and manner of payment of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and

(b) the state agency that makes the placement for the portion of the placement costs that represents the child's education program.

(4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation."

1           **Section 4.** Section 23-5-158, MCA, is amended to read:

2           **"23-5-158. Minors not to participate -- penalty -- exception.** (1) Except as provided in subsection  
3 (3), a person may not purposely or knowingly allow a person under 18 years of age to participate in a  
4 gambling activity. A person who violates this subsection is guilty of a misdemeanor and must be punished  
5 in accordance with 23-5-161.

6           (2) Except as provided in subsection (3), a person under 18 years of age may not purposely or  
7 knowingly participate in a gambling activity. A person who violates this subsection is subject to a civil  
8 penalty not to exceed \$50 if the proceedings for violating this subsection are held in justice's, municipal,  
9 or city court. If the proceedings are held in youth court, the offender must be treated as an alleged youth  
10 in need of ~~supervision~~ intervention, as defined in 41-5-103. The youth court may enter its judgment under  
11 41-5-523.

12           (3) A person under 18 years of age may sell or buy tickets for or receive prizes from a raffle  
13 conducted in compliance with 23-5-413 if proceeds from the raffle, minus administrative expenses and  
14 prizes paid, are used to support charitable activities, scholarships or educational grants, or community  
15 service projects."

16  
17           **Section 5.** Section 41-3-205, MCA, is amended to read:

18           **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of  
19 public health and human services and its local affiliate, the county welfare department, the county attorney,  
20 and the court concerning actions taken under this chapter and all records concerning reports of child abuse  
21 and neglect must be kept confidential except as provided by this section. Except as provided in subsections  
22 (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case  
23 records is guilty of a misdemeanor.

24           (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it.  
25 The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an  
26 issue before it.

27           (3) Records may also be disclosed to the following persons or entities in this state and any other  
28 state or country:

29           (a) a department, agency, or organization, including a federal agency, military enclave, or Indian  
30 tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or



1 neglect and that otherwise meets the disclosure criteria contained in this section;

2 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the  
3 family or child who is the subject of a report in the records;

4 (c) a health or mental health professional who is treating the family or child who is the subject of  
5 a report in the records;

6 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject  
7 of a report in the records or other person responsible for the child's welfare, without disclosure of the  
8 identity of any person who reported or provided information on the alleged child abuse or neglect incident  
9 contained in the records;

10 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian  
11 or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed  
12 by the court to represent a child in a pending case;

13 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

14 (g) approved foster and adoptive parents who are or will be providing care for a child;

15 (h) a person about whom a report has been made and that person's attorney, with respect to the  
16 relevant records pertaining to that person only and without disclosing the identity of the reporter or any  
17 other person whose safety may be endangered;

18 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision  
19 of an alleged perpetrator of child abuse or neglect;

20 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project  
21 and that is authorized by the department to conduct the research or evaluation;

22 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 for the  
23 purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the  
24 plan;

25 (l) the coroner or medical examiner when determining the cause of death of a child;

26 (m) a child fatality review team recognized by the department;

27 (n) a department or agency investigating an applicant for a license or registration that is required  
28 to operate a youth care facility, day-care facility, or child-placing agency;

29 (o) a person or entity who is carrying out background, employment-related, or volunteer-related  
30 screening of current or prospective employees or volunteers who have or may have unsupervised contact

with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the department.

(p) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department, if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203; ~~or~~

(y) a member of a youth placement committee formed under the provisions of 41-5-525; or

(z) a principal of a school or a school employee who is working with a student who is a common client of the department.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(5) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (4) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(6) This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

**Section 6.** Section 41-3-1101, MCA, is amended to read:

**"41-3-1101. Establishment of substitute care for youth.** The legislature, in recognition of the wide and varied needs of youth in need of care, delinquent youth, and youth in need of ~~supervision~~ intervention of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, establishes by this part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide those facilities and services through local nonprofit corporations, counties, and the department of public health and human services."

**Section 7.** Section 41-3-1102, MCA, is amended to read:

**"41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a licensed youth foster home.

(4) "Operator of a youth care facility" means a person owning or operating a youth care facility into which the operator takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance the operator receives money or other consideration of value and which child is ~~neither~~ not the operator's son, daughter, ~~nor~~ or ward, except that this part does not apply when any person accepts the care and custody of a child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of the child.

(5) "Person" means any individual, partnership, voluntary association, or corporation.

(6) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

(7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 41-3-1151.

(8) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(9) "Youth assessment placement" has the meaning provided in 41-5-103.

~~(9)~~(10) "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, youth group homes, ~~and~~ child-care agencies, and youth assessment placements.

~~(10)~~(11) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

~~(11)~~(12) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth."

**Section 8.** Section 41-3-1103, MCA, is amended to read:

**"41-3-1103. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, ~~and~~ child-care agencies, and youth assessment placements for youth in need of care, as defined in ~~41-5-103~~ 41-3-102;

(b) exercise licensing authority over all youth foster homes, youth group homes, ~~and~~ child-care agencies, and youth assessment placements;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth

1 care facilities;

2 (f) maintain adequate data on placements it funds in order to keep the legislature properly informed  
3 of the following:

4 (i) the number of youth in need of care in out-of-home care facilities;

5 (ii) the cost per facility for services rendered;

6 (iii) the type and level of care of services provided by each facility;

7 (iv) a profile of out-of-home care placements by level of care; and

8 (v) a profile of public institutional placements; and

9 (g) administer all funds allocated to the department for residential alcohol and drug abuse treatment  
10 for indigent youths in need of care, indigent youths in need of ~~supervision~~ intervention, and indigent  
11 delinquent youths who require treatment.

12 (2) The department may:

13 (a) enter into contracts with nonprofit corporations or associations or private organizations to  
14 provide substitute care for youth in need of care in youth care facilities;

15 (b) accept gifts, grants, and donations of money and property from public and private sources to  
16 initiate and maintain community-based services to youth;

17 (c) adopt rules to carry out the administration and purposes of this part.

18 (3) The department shall pay for room, board, clothing, personal needs, transportation, and  
19 treatment in youth foster care homes and youth group homes for youths committed to the department who  
20 need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must  
21 be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under  
22 this subsection may not exceed appropriations for the purposes of this subsection."  
23

24 **Section 9.** Section 41-3-1114, MCA, is amended to read:

25 **"41-3-1114. Continuing jurisdiction of youth court.** The youth court committing a delinquent youth  
26 or a youth in need of ~~supervision~~ intervention to the department of corrections retains continuing  
27 jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by the  
28 department after notice to the youth court of original jurisdiction."  
29

30 **Section 10.** Section 41-3-1122, MCA, is amended to read:

1       **"41-3-1122. Payment for support of youth in need of care, youth in need of supervision**  
2 **intervention, or delinquent youth -- reimbursement by county.** (1) Whenever a youth who is a youth in need  
3 of care, a youth in need of ~~supervision~~ intervention, or a delinquent youth is placed by the department of  
4 public health and human services or the department of corrections in a youth care facility, the department  
5 making the placement shall pay, within the limits of the appropriation for that purpose, a foster care  
6 payment to the youth care facility at a rate established by the department of public health and human  
7 services for the youth's board, clothing, personal needs, treatment, and room ~~of the youth~~.

8       (2) On or before the 20th of each month, the department of public health and human services or  
9 the department of corrections shall present a claim to the county of residence of the youth for no more than  
10 one-half of the nonfederal share of the payments made during the month. The county shall make  
11 reimbursement to the department within 20 days after the claim is presented.

12       (3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches  
13 the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster  
14 care expenditures.

15       (4) If a county's level of expenditure for foster care in fiscal year 1987 ~~is~~ was \$10,000 or less, the  
16 county's level of expenditure for purposes of determining the county's reimbursement specified in  
17 subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal  
18 years 1984 through 1987, whichever is less.

19       (5) A county that was state-assumed prior to 1987, but that at a later date reassumes  
20 responsibility pursuant to 53-2-811, is responsible for reimbursement of foster care expenditures up to the  
21 county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.

22       (6) The department shall conduct or arrange for the review required under 41-3-1115, or when  
23 applicable, 41-3-1010 of a youth placed in a youth care facility if the youth is placed by the department."  
24

25       **Section 11.** Section 41-3-1132, MCA, is amended to read:

26       **"41-3-1132. Governmental contracts with nonprofit organizations.** (1) The department of public  
27 health and human services and the department of corrections may contract with nonprofit corporations or  
28 associations to provide facilities and services for youth in need of care, youth in need of ~~supervision~~  
29 intervention, and delinquent youth in youth care facilities and are authorized to expend money that is  
30 appropriated or available for those purposes. The contracts must be based on the following considerations:

(a) budgets submitted by the nonprofit corporation or association identifying fixed and variable costs;

(b) reasonable costs of service;

(c) appropriation level; and

(d) availability of funds.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized, ~~at their own expense,~~ to provide funds, materials, facilities, and services for community-based services at their own expense."

**Section 12.** Section 41-5-103, MCA, is amended to read:

**"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention as indicated by:

(a) the committing of an offense that would not be a criminal offense if committed by an adult; and

(b) referral of a parent or guardian, a school representative, or a law enforcement officer.

~~(3)(4)~~ "Commit" means to transfer to legal custody.

~~(4)(5)~~ "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

~~(5)(6)~~ "Court", when used without further qualification, means the youth court of the district court.

~~(6)(7)~~ "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

~~(7)(8)~~ "Delinquent youth" means a youth:

~~(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense who is adjudicated under formal proceedings under the Montana Youth Court Act as a:~~

(a) serious juvenile offender;

(b) youth who has violated a consent decree with petition;

1 (c) youth who has violated a valid court order; or

2 ~~(b)(d)~~ youth who, having been placed on probation as a delinquent youth or a youth in need  
3 of supervision, violates intervention and who has violated any condition of probation.

4 ~~(8)(9)~~ "Department" means the department of corrections provided for in 2-15-2301.

5 ~~(9)(10)~~ "Detention" means the holding or temporary placement of a youth in the youth's home  
6 under home arrest or in a facility other than the youth's own home for:

7 (a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken  
8 into custody and before final disposition of the youth's case; or

9 (b) contempt of court or violation of a valid court order.

10 ~~(10)(11)~~ "Detention facility" means a physically restricting facility designed to prevent a youth from  
11 departing at will. The term includes a youth detention facility, short-term detention center, and regional  
12 detention facility.

13 (12) "Family" means the parents, guardians, legal custodians, and siblings or other youth with  
14 whom a youth ordinarily lives.

15 (13) "Family assessment" means an evaluation and assessment of a youth's and a youth's family's  
16 strengths and needs as determined through a multidisciplinary evaluation, including but not limited to a  
17 chemical dependency evaluation, an education assessment, a mental health evaluation using the public  
18 mental health program, family-based services, and other services provided by the department of public  
19 health and human services or other state and local agencies.

20 ~~(14)(14)~~ "Final disposition" means the implementation of a court order for the disposition or  
21 placement of a youth as provided in 41-5-523 and [sections 33 through 40].

22 ~~(12)(15)~~ "Foster home" means a private residence licensed by the department of public health and  
23 human services for placement of a youth.

24 ~~(13)(16)~~ "Guardianship" means the status created and defined by law between a youth and an adult  
25 with the reciprocal rights, duties, and responsibilities. "Guardian" means an adult:

26 (a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with  
27 the youth; and

28 (b) whose status is created and defined by law.

29 (17) "Habitual truancy" means recorded absences of:

30 (a) 7 days or more in a semester for a student from grades 1 through 8; or



1 (b) 7 periods or more in a week for a student from grades 9 through 12.

2 ~~(14)~~(18) "Holdover" means a room, office, building, or other place approved by the board of crime  
3 control for the temporary detention and supervision of youth in a physically unrestricting setting for a period  
4 not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an  
5 appropriate detention or shelter care facility. The term does not include a jail.

6 ~~(15)~~(19) "Jail" means a facility used for the confinement of adults accused or convicted of criminal  
7 offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults  
8 after arrest.

9 ~~(16)~~(20) "Judge", when used without further qualification, means the judge of the youth court.

10 ~~(17)~~(21) (a) "Legal custody" means the legal status created by order of a court of competent  
11 jurisdiction that gives a person the right and duty to:

12 (i) have physical custody of the youth;

13 (ii) determine with whom the youth shall live and for what period;

14 (iii) protect, train, and discipline the youth; and

15 (iv) provide the youth with food, shelter, education, and ordinary medical care.

16 (b) An individual granted legal custody of a youth shall personally exercise the individual's rights  
17 and duties as guardian unless otherwise authorized by the court entering the order.

18 (22) "Mentally ill" means suffering from a mental disorder that has not resulted in self-inflicted injury  
19 or injury to others or the imminent threat of injury but that:

20 (a) has resulted in behavior that creates serious difficulty in protecting the person's life or health  
21 even with the available assistance of family, friends, or others;

22 (b) is treatable, with a reasonable prospect of success;

23 (c) has deprived the person of the capacity to make an informed decision concerning treatment;

24 (d) has resulted in the person's refusing or being unable to consent to voluntary admission for  
25 treatment; and

26 (e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated,  
27 predictably result in further serious deterioration in the mental condition of the person. Predictability may  
28 be established by the patient's medical history.

29 ~~(18)~~(23) "Necessary parties" includes the youth, and the youth's parents, guardian, custodian, or  
30 spouse.

1       ~~(19)~~(24) "Parent" means the natural or adoptive parent but does not include a person whose  
2       parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth  
3       unless the putative father's paternity is established by an adjudication or by other clear and convincing  
4       proof.

5       ~~(20)~~(25) "Probable cause hearing" means the hearing provided for in 41-5-303.

6       ~~(21)~~(26) "Regional detention facility" means a youth detention facility established and maintained  
7       by two or more counties, as authorized in 41-5-811.

8       ~~(22)~~(27) "Restitution" means payments in cash to the victim or with services to the victim or the  
9       general community when these payments are made pursuant to an informal adjustment, consent decree,  
10      or other youth court order.

11      ~~(23)~~(28) "Secure detention facility" means ~~any~~ a public or private facility that:

12      (a) is used for the temporary placement of youth or individuals accused or convicted of criminal  
13      offenses or as a sanction for contempt of court or violation of a valid court order; and

14      (b) is designed to physically restrict the movements and activities of youth or other individuals held  
15      in lawful custody of the facility.

16      ~~(24)~~(29) "Serious juvenile offender" means a youth who has committed an offense that would be  
17      considered a felony offense if committed by an adult and that is an offense against a person, an offense  
18      against property, or an offense involving dangerous drugs.

19      ~~(25)~~(30) "Shelter care" means the temporary substitute care of youth in physically unrestricting  
20      facilities.

21      ~~(26)~~(31) "Shelter care facility" means a facility used for the shelter care of youth. The term is  
22      limited to the facilities enumerated in 41-5-306(1)(a).

23      ~~(27)~~(32) "Short-term detention center" means a detention facility licensed by the department for  
24      the temporary placement or care of youth, for a period not to exceed ~~96 hours~~ 10 working days, pending  
25      a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth  
26      assessment placement, or shelter care facility.

27      ~~(28)~~(33) "State youth correctional facility" means a residential facility used for the placement and  
28      rehabilitation of delinquent youth, such as the Pine Hills school in Miles City ~~and the Mountain View school~~  
29      ~~in Helena.~~

30      ~~(29)~~(34) "Substitute care" means full-time care of youth in a residential setting for the purpose of

1 providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who  
2 are removed from or are without the care and supervision of their parents or ~~guardian~~ guardians.

3 (35) "Victim" means:

4 (a) a person who suffers property, physical, or emotional injury as a result of an offense committed  
5 by a youth that would be a felony offense if committed by an adult;

6 (b) an adult relative of the victim as defined in subsection (35)(a) if the victim is a minor; and

7 (c) an adult relative of a homicide victim.

8 ~~(30)~~(36) "Youth" means an individual who is less than 18 years of age without regard to sex or  
9 emancipation.

10 (37) "Youth assessment placement" means a staff-secured location licensed by the department of  
11 public health and human services in which a youth may be held for up to 10 days to ascertain a youth's  
12 and a youth's family's strengths and needs, including but not limited to an evaluation of mental health,  
13 chemical dependency, and abuse and neglect.

14 (38) "Youth care facility" has the meaning provided in 41-3-1102.

15 ~~(34)~~(39) "Youth court" means the court established pursuant to this chapter to hear all proceedings  
16 in which a youth is alleged to be a delinquent youth, a youth in need of ~~supervision~~ intervention, or a youth  
17 in need of care and includes the youth court judge and probation officers.

18 ~~(32)~~(40) "Youth detention facility" means a secure detention facility licensed by the department for  
19 the temporary substitute care of youth that:

20 (a) is operated, administered, and staffed separately and independently of a jail; and

21 (b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a  
22 sanction for contempt of court or violation of a valid court order.

23 ~~(33)~~(41) "Youth in need of care" has the meaning provided for in 41-3-102.

24 ~~(34)~~(42) "Youth in need of ~~supervision~~ intervention" means a youth who is adjudicated as a youth  
25 and who commits an offense prohibited by law that, if committed by an adult, would not constitute a  
26 criminal offense, including but not limited to a youth who:

27 (a) violates any Montana municipal or state law regarding ~~use of~~ alcoholic beverages, tobacco  
28 products, or gambling by minors;

29 (b) continues to exhibit behavior, including running away from home or habitual truancy, beyond  
30 the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of

1 the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to  
2 mediate, resolve, or control the youth's behavior; or

3 (c) has committed any of the acts of a delinquent youth but whom the youth court, in its  
4 discretion, chooses to regard as a youth in need of ~~supervision~~ intervention."

5  
6 **Section 13.** Section 41-5-201, MCA, is amended to read:

7 **"41-5-201. Youth court judge -- judges pro tempore -- special masters.** (1) Each judicial district  
8 in the state ~~shall~~ must have at least one judge of the youth court. ~~His, whose~~ duties ~~shall be~~ are to:

9 (a) appoint and supervise qualified personnel to staff the youth division probation departments  
10 within the judicial district;

11 (b) conduct hearings on youth court proceedings under this chapter;

12 (c) perform any other functions consistent with the legislative purpose of this chapter.

13 (2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their  
14 number to act as youth court judge in each county in the judicial district for a fixed period of time. Service  
15 as youth court judge may be rotated among the different judges of the judicial district and among the  
16 individual counties within the judicial district for given periods of time. Continuity of service of a given judge  
17 as youth court judge and continuity in the operation and policies of the youth court in the county having  
18 the largest population in the judicial district ~~shall~~ must be the principal consideration of the rule.

19 (3) (a) A youth court judge may appoint a judge pro tempore or a special master to conduct  
20 preliminary, nondispositive matters, including but not limited to hearings for probable cause or detention  
21 and taking of responses for petitions.

22 (b) A judge pro tempore or special master must be a member of the state bar of Montana."  
23

24 **Section 14.** Section 41-5-203, MCA, is amended to read:

25 **"41-5-203. Jurisdiction of the court.** (1) Except as provided in subsection (2) and for cases filed  
26 in the district court under 41-5-206, the court has exclusive original jurisdiction of all proceedings under  
27 the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of  
28 ~~supervision~~ intervention, or a youth in need of care or concerning any person under 21 years of age  
29 charged with having violated any law of the state or any ordinance of ~~any~~ a city or town other than a traffic  
30 or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth."

**Section 15.** Section 41-5-204, MCA, is amended to read:

**"41-5-204. Venue and transfer.** (1) The county where a youth is a resident or is alleged to have violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. ~~The~~ Except as provided in 41-5-206, the youth court shall assume the initial handling of the case.

(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a youth in need of ~~supervision~~ intervention or a youth in need of care. The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law; or

(c) the county of residence of the youth's parents or guardian.

(3) In the case of a youth alleged to be a youth in need of ~~supervision~~ intervention or a youth in need of care, a change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to ~~assure~~ ensure a fair, impartial, and speedy hearing and final disposition of the case.

(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206, ~~the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth and who is to be tried in district court, the charge shall~~ must be filed and trial held in the district court of the county where the offense occurred."

**Section 16.** Section 41-5-205, MCA, is amended to read:

**"41-5-205. Retention of jurisdiction -- termination.** ~~Once~~ Except for cases filed in the district court under 41-5-206, once a court obtains jurisdiction over a youth, the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time the youth is discharged by the department; and

(3) in any event, at the time the youth reaches ~~the age of~~ 21 years of age."

Section 17. Section 41-5-206, MCA, is amended to read:

"41-5-206. ~~Transfer to criminal~~ Filing in district court prior to prosecution formal proceedings in youth court. (1) ~~After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:~~

~~(a) (i) The county attorney may, in the county attorney's discretion, file with the district court a motion for leave to file an information in the district court if:~~

~~(a) the youth charged was 12 years of age or more older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:~~

~~(i) sexual intercourse without consent as defined in 45-5-503;~~

~~(ii) deliberate homicide as defined in 45-5-102;~~

~~(iii) mitigated deliberate homicide as defined in 45-5-103; or~~

~~(iv) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or~~

~~(b) the youth charged was 16 years of age or more older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:~~

~~(A)(i) negligent homicide as defined in 45-5-104;~~

~~(B)(ii) arson as defined in 45-6-103;~~

~~(C)(iii) aggravated or felony assault as defined in 45-5-202;~~

~~(D)(iv) robbery as defined in 45-5-401;~~

~~(E)(v) burglary or aggravated burglary as defined in 45-6-204;~~

~~(F)(vi) aggravated kidnapping as defined in 45-5-303;~~

~~(G)(vii) possession of explosives as defined in 45-8-335;~~

~~(H)(viii) criminal sale of dangerous drugs as defined in 45-9-101;~~

~~(I)(ix) criminal production or manufacture of dangerous drugs as defined in 45-9-110;~~

~~(J)(x) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(a)(iii)(A) (1)(b)(i) through (1)(a)(iii)(H) (1)(b)(x);~~

~~(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court without a jury;~~

~~(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, the youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and~~

~~(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:~~

~~(i) the youth committed the delinquent act alleged;~~

~~(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and~~

~~(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.~~

~~(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:~~

~~(a) the sophistication and maturity of the youth, determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living;~~

~~(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts is not of itself grounds for denying the transfer.~~

~~(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.~~

~~(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.~~

~~(5)~~ (2) The transfer filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1105.

~~(6) Upon order of the youth court transferring the case to the district court under subsection (5), the county attorney shall file the information against the youth without unreasonable delay.~~

~~(7)~~ (3) Any An offense not enumerated in subsection (1) that arises during the commission of a

1 crime enumerated in subsection (1) may be:

2 (a) tried in youth court;

3 (b) transferred to district court with an offense enumerated in subsection (1), upon motion of the  
4 county attorney and order of the ~~youth~~ district court judge.

5 ~~(8)(4)~~ If a youth is found guilty in district court of any of the offenses ~~transferred by the youth~~  
6 ~~court~~ enumerated in subsection (1) and is sentenced to the state prison, the commitment must be to the  
7 department of corrections. The department shall confine the youth in whatever institution that it considers  
8 proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth  
9 under 16 years of age may not be confined in the state prison.

10 ~~(9)(5)~~ A youth whose case is ~~transferred to~~ filed in the district court may not be detained or  
11 otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

12 (a) alternative facilities do not provide adequate security; and

13 (b) the youth is kept in an area that provides physical, separation as well as sight and sound,  
14 separation from adults accused or convicted of criminal offenses."

15  
16 **Section 18.** Section 41-5-208, MCA, is amended to read:

17 **"41-5-208. Transfer of supervisory responsibility to district court after ~~prosecution~~ — juvenile**  
18 **~~disposition in district court -- limitation on jurisdiction nonextended jurisdiction and nontransferred cases.~~**

19 **~~(1) To~~ After adjudication by the court of a case that was not transferred to district court under 41-5-206**  
20 **and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 11 of this chapter,**  
21 **the court may, on its own motion or the motion of the county attorney, transfer jurisdiction to the district**  
22 **court and order the transfer of supervisory responsibility from juvenile probation services to adult probation**  
23 **services. A transfer under this section may be made to ensure continued compliance with the court's**  
24 **disposition under 41-5-523, or [section 33] and may be made** at any time after a youth reaches 18 years  
25 of age but before the youth reaches 21 years of age, ~~the youth court judge may transfer jurisdiction to~~  
26 ~~district court and order the transfer of supervisory responsibility and the youth's case files to the~~  
27 ~~department.~~

28 **(2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The**  
29 **hearing must be held in conformity with the rules for a hearing on a petition alleging delinquency, except**  
30 **that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's**



counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to:

(a) receive written notice of the motion to transfer;

(b) an opportunity to be heard in person and to present witnesses and evidence;

(c) receive a written statement by the court of the evidence relied on and the reasons for the transfer;

(d) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and

(e) the right to counsel.

(3) After the hearing, if the court finds by a preponderance of the evidence that transfer of continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

~~(2)~~(4) If a youth whose case has been transferred to district court under this section violates a disposition previously imposed under 41-5-523, the district court may, after hearing, impose conditions as provided under 46-18-201 through 46-18-203.

~~(3)~~(5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 18 years of age:

(a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

(b) be supervised by the department.

~~(4)~~(6) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age."

**Section 19.** Section 41-5-301, MCA, is amended to read:

**"41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information from ~~any~~ an agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of ~~supervision~~ intervention or, ~~being that the youth is~~ subject to a court order or consent order, and has violated the terms of an order, a probation officer or an assessment officer shall make a preliminary inquiry into the matter.

(2) The probation officer or assessment officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

1 (c) require investigation of the matter by any law enforcement agency or any other appropriate  
2 state or local agency.

3 (3) If the probation officer or assessment officer determines that the facts indicate that the youth  
4 is a youth in need of care, the matter must be immediately referred to the department of public health and  
5 human services.

6 (4) (a) The probation officer or assessment officer in the conduct of the preliminary inquiry shall:

7 (i) advise the youth of the youth's rights under this chapter and the constitutions of the state of  
8 Montana and the United States;

9 (ii) determine whether the matter is within the jurisdiction of the court;

10 (iii) determine, if the youth is in detention, youth assessment placement, or shelter care, whether  
11 detention, youth assessment placement, or shelter care should be continued or modified based upon criteria  
12 set forth in 41-5-305.

13 (b) Once relevant information is secured, the probation officer or assessment officer shall:

14 (i) determine whether the interest of the public or the youth requires that further action be taken;

15 (ii) terminate the inquiry upon the determination that no further action be taken; and

16 (iii) release the youth immediately upon the determination that the filing of a petition is not  
17 authorized.

18 (5) The probation officer or assessment officer upon determining that further action is required  
19 may:

20 (a) provide counseling, refer the youth and the youth's ~~parents~~ family to another agency providing  
21 appropriate services, or take any other action or make any informal adjustment that does not involve  
22 probation or detention;

23 (b) provide for treatment or adjustment involving probation or other disposition authorized under  
24 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents  
25 or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if  
26 the probation officer or assessment officer proceeds no further unless authorized by the county attorney;  
27 or

28 (c) refer the matter to the county attorney for filing a petition in youth court charging the youth  
29 to be a delinquent youth or a youth in need of ~~supervision~~ intervention or for filing an information in the  
30 district court as provided in 41-5-206.

(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of ~~supervision~~ intervention. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(7) A petition charging a youth who is held in detention or youth assessment placement must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

(8) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer or assessment officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer or assessment officer, and make the final decision as to whether a petition is filed."

**Section 20.** Section 41-5-303, MCA, is amended to read:

**"41-5-303. Rights of youth taken into custody -- questioning -- hearing for probable cause -- detention.** (1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of ~~supervision~~ intervention, the following requirements must be met:

(a) The youth must be advised of ~~his~~ the youth's right against self-incrimination and ~~his~~ the youth's right to counsel.

(b) The youth may waive these rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under ~~the age of~~ 16 years of age and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under ~~the age of~~ 16 years of age and the youth and ~~his~~ the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth

1 must be notified.

2 (2) Unless a youth has been released, a hearing must be held within 24 hours after the youth is  
3 taken into custody, excluding weekends and legal holidays, to determine whether there is probable cause  
4 to believe that the youth is a delinquent youth or a youth in need of supervision intervention.

5 (3) The probable cause hearing required under subsection (2) may be held by the youth court, a  
6 justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided  
7 in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or  
8 a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the  
9 hearing.

10 (4) At the probable cause hearing, the youth must be informed of ~~his~~ the youth's constitutional  
11 rights and ~~his~~ the youth's rights under this chapter.

12 (5) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing  
13 to be present at or to participate in the probable cause hearing unless ~~he~~ the parent, guardian, or legal  
14 custodian:

15 (a) cannot be located through diligent efforts of the investigating peace officer or peace officers;

16 or

17 (b) is excused by the court for good cause.

18 (6) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.

19 (7) If it is determined that there is probable cause to believe that the youth is a delinquent youth  
20 or is a youth in need of supervision intervention, the court having jurisdiction in the case shall determine  
21 whether the youth should be retained in custody. If the court determines that continued custody of the  
22 youth is necessary and if the youth meets the criteria in 41-5-305, the youth may be placed in a detention  
23 facility, a youth assessment placement, or a shelter care facility as provided in 41-5-306 but may not be  
24 placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

25 (8) If probable cause is not found or if a probable cause hearing is not held within the time specified  
26 in subsection (2), the youth must be immediately released from custody."  
27

28 **Section 21.** Section 41-5-304, MCA, is amended to read:

29 **"41-5-304. Investigation, fingerprints, and photographs.** (1) All law enforcement investigations  
30 relating to a delinquent youth or youth in need of supervision intervention must be conducted in accordance

with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged is a felony.

(3) Fingerprint records and photographs may be used by the department of justice or any law enforcement agency in the judicial district for comparison and identification purposes in any other investigation."

**Section 22.** Section 41-5-305, MCA, is amended to read:

**"41-5-305. Criteria for placement of youth in secure detention facilities, youth assessment placements, or shelter care facilities.** (1) A youth may not be placed in a secure detention facility unless:

(a) ~~he~~ the youth has allegedly committed an act that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;

(b) ~~he~~ the youth is alleged to be a delinquent youth and:

(i) ~~he~~ the youth has escaped from a correctional facility or secure detention facility;

(ii) ~~he~~ the youth has violated a valid court order or an aftercare agreement;

(iii) ~~his~~ the youth's detention is required to protect persons or property;

(iv) ~~he~~ the youth has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(v) there are not adequate assurances that ~~he~~ the youth will appear for court when required; or

(vi) ~~he~~ the youth meets additional criteria for secure detention established by the youth court in the judicial district that has current jurisdiction over ~~him~~ the youth; or

(c) ~~he~~ the youth has been adjudicated delinquent and is awaiting final disposition of ~~his~~ the youth's case.

(2) A youth may not be placed in a shelter care facility unless:

(a) the youth and ~~his~~ the youth's family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of ~~his~~ the youth's troubling behavior;

(d) shelter care is necessary to assess the youth and ~~his~~ the youth's environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

(3) A youth may not be placed in a youth assessment placement unless:

(a) the youth meets the requirements for placement in shelter care;

(b) the youth has not committed an act that would be a felony offense if committed by an adult;

(c) the youth needs an alternative, staff-secured site for evaluation and assessment of the youth's and the youth's family's need for services;

(d) the youth needs to be held accountable for the youth's actions with structured programming;  
and

(e) the youth meets qualifications as outlined by the placement guidelines that are determined by the department and coordinated with the guidelines used by the youth placement committees."

**Section 23.** Section 41-5-306, MCA, is amended to read:

**"41-5-306. Place of shelter care, youth assessment, or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of ~~supervision~~ intervention may be placed only:

~~(a) in a licensed youth foster home as defined in 41-3-1102;~~

~~(b) in a facility operated by a licensed child welfare agency;~~

~~(c) in a licensed youth group home as defined in 41-3-1102; or~~

(a) in a licensed youth care facility as defined in 41-3-1102;

(b) in a youth assessment placement; or

~~(d)(c)~~ under home arrest, with or without a monitoring device, either in the youth's own home or in ~~one of the facilities described in subsections (1)(a) through (1)(c)~~ a licensed youth care facility, as provided in Title 46, chapter 18, part 10.

(2) A youth alleged to be a youth in need of care may be placed only ~~in the facilities listed in~~

1 ~~subsection (1)~~ by the department of public health and human services as provided in Title 41, chapter 3,  
2 and may not be placed in a youth assessment placement or in a jail or other facility intended or used for  
3 the confinement of adults accused or convicted of criminal offenses.

4 (3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent  
5 youth may be placed only:

6 (a) in the facilities described in subsection (1);

7 (b) under home arrest as provided in subsection (1);

8 (c) in a short-term detention center;

9 (d) in a youth detention facility; or

10 (e) in a community youth court program."

11  
12 **Section 24.** Section 41-5-401, MCA, is amended to read:

13 **"41-5-401. Consent adjustment without petition.** (1) ~~Before a petition is filed~~ referring the matter  
14 to the county attorney and subject to the limitations in subsection (3), the probation officer or assessment  
15 officer may enter into an informal adjustment and give counsel and advice to the youth, the youth's family,  
16 and other interested parties if it appears that:

17 (a) the admitted facts bring the case within the jurisdiction of the court;

18 (b) counsel and advice without filing a petition would be in the best interests of the child, the  
19 family, and the public; and

20 (c) the youth may be a youth in need of ~~supervision~~ intervention and ~~if~~ the probation officer or  
21 assessment officer believes that the parents, foster parents, physical custodian, or guardian exerted all  
22 reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit  
23 behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

24 (2) Any probation or other disposition imposed under this section against ~~any~~ a youth must  
25 conform to the following procedures:

26 (a) Every consent adjustment ~~shall~~ must be reduced to writing and signed by the youth and ~~his~~ the  
27 youth's parents or the person having legal custody of the youth.

28 (b) If the probation officer or assessment officer believes the youth is a youth in need of  
29 ~~supervision~~ intervention, the probation officer or assessment officer shall determine that the parents, foster  
30 parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the

youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

(3) A consent adjustment without petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult."

**Section 25.** Section 41-5-403, MCA, is amended to read:

**"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or guardians for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and ~~as determined by the department~~ pursuant to a recommendation made under 41-5-525;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth ~~as determined by the department~~ pursuant to a recommendation made under 41-5-525;

(d) restitution, as provided in [section 31], upon approval of the youth court judge;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;

(f) a requirement that the youth, the youth's parents, guardians, or family, or the persons having legal custody of the youth receive counseling services;

(g) placement in a youth assessment placement for up to 10 days;

(h) placement of the youth in detention for up to 3 days on a space-available basis;

(i) a requirement that the youth perform community service;

(j) a requirement that the youth participate in victim-offender mediation;

(k) an order that the youth or the youth's parents or guardians pay a contribution covering all or a part of the costs for the adjudication, disposition, supervision, care, custody, and treatment of the youth, including the costs of court-appointed counseling;

(l) an order that the youth or the youth's parents or guardians pay a contribution covering all or a part of the costs of a victim's counseling or restitution for damages that result from the offense for which the youth is disposed.

~~(2) In determining whether restitution is appropriate in a particular case, the following factors may~~



1 ~~be considered in addition to any other evidence:~~

2 ~~(a) age of the youth;~~

3 ~~(b) ability of the youth to pay;~~

4 ~~(c) ability of the parents, legal guardian, or persons contributing to the youth's delinquency or need~~  
5 ~~for supervision to pay;~~

6 ~~(d) amount of damage to the victim; and~~

7 ~~(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand~~  
8 ~~any loss may not be considered in any case.~~

9 ~~(3)(2)~~ If the youth violates an aftercare agreement as provided for in 52-5-126, the youth must be  
10 returned to the court for further disposition. A youth may not be placed in a state youth correctional facility  
11 under informal adjustment.

12 ~~(4)(3)~~ If the youth is placed in substitute care, an assessment placement, or detention requiring  
13 payment by ~~the~~ any state department or local government agency, the court shall examine the financial  
14 ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the  
15 adjudication, disposition, supervision, care, placement, and treatment of the youth, including the costs of  
16 necessary medical, dental, and other health care.

17 ~~(5)(4)~~ If the court determines that the youth's parents or guardians are financially able to pay a  
18 contribution as provided in subsection ~~(4) (3)~~, the court shall order the youth's parents or guardians to pay  
19 an amount attributable to care, custody, and treatment based on the uniform child support guidelines  
20 adopted by the department of public health and human services pursuant to 40-5-209. The order must  
21 state to which state or local agency all or a part of the contribution is due and in what order the payments  
22 will be made.

23 ~~(6)(5)~~ (a) Except as provided in subsection ~~(6)(b)~~ (5)(b), contributions ordered under this section  
24 and each modification of an existing order are enforceable by immediate or delinquency income withholding,  
25 or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section  
26 is nevertheless subject to withholding for the payment of the contribution without need for an amendment  
27 of the support order or for any further action by the court.

28 (b) A court-ordered exception from contributions under this section must be in writing and be  
29 included in the order. An exception from the immediate income withholding requirement may be granted  
30 if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

~~(7)(6)~~ (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

**Section 26.** Section 41-5-501, MCA, is amended to read:

**"41-5-501. Petition -- form and content.** A petition initiating proceedings under this chapter ~~shall~~ must be signed by the county attorney, ~~and shall~~ must be entitled "In the Matter of ....., a youth", ~~and shall~~ must set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent youth or a youth in need of ~~supervision~~ intervention;

(2) the charge of an offense, which ~~shall~~ must:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, or other provisions of law ~~which~~ that the youth is

1 alleged to have violated;

2 (c) state the facts constituting the offense in ordinary and concise language and in ~~such a~~ manner  
3 ~~as to enable~~ that enables a person of common understanding to know what is intended; and

4 (d) state the time and place of the offense as definitely as ~~can be done~~ possible;

5 (3) the name, birth date, and residence address of the youth;

6 (4) the names and residence addresses of the parents, guardian, ~~and or~~ spouse of the youth and  
7 if ~~none of~~ the parents, guardian, or spouse ~~resides~~ do not reside or can not be found within the state or  
8 if there is none, the adult relative residing nearest to the court;

9 (5) whether the youth is in detention, youth assessment placement, or shelter care and, if so, the  
10 place of detention, youth assessment placement, or shelter care and the time ~~he~~ the youth was detained  
11 or sheltered;

12 (6) if any of the matters required to be set forth by this section are not known, a statement of  
13 those matters and the fact that they are not known; and

14 (7) a list of witnesses to be used in proving the commission of the offense or offenses charged in  
15 the petition, together with their residence addresses. The names and addresses of any witnesses discovered  
16 after the filing of the petition ~~shall~~ must be furnished to the youth upon request."

17  
18 **Section 27.** Section 41-5-511, MCA, is amended to read:

19 "41-5-511. **Right to counsel.** In all proceedings following the filing of a petition alleging that a  
20 youth is a delinquent youth or youth in need of ~~supervision~~ intervention, the youth and the parents or  
21 guardian of the youth ~~shall~~ must be advised by the court or, in the absence of the court, by its  
22 representative that the youth may be represented by counsel at all stages of the proceedings. If counsel  
23 is not retained or if it appears that counsel will not be retained, counsel ~~shall~~ must be appointed for the  
24 youth if the parents or guardian and the youth are unable to provide counsel unless the right to appointed  
25 counsel is waived by the youth and the parents or guardian. Neither the youth nor ~~his parent~~ the youth's  
26 parents or guardian may waive counsel after a petition has been filed if commitment to the department for  
27 a period of more than 6 months may result from adjudication."

28  
29 **Section 28.** Section 41-5-515, MCA, is amended to read:

30 "~~41-5-515. Persons to be advised of rights~~ Rights and obligations -- persons to be advised --

1 ~~contempt.~~ (1) ~~Persons~~ A person afforded rights under this chapter ~~shall~~ must be advised of those rights  
2 and any other rights existing under law at the time of ~~their~~ the person's first appearance in a proceeding  
3 on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

4 (2) A person must be advised of obligations that may arise under this chapter, including the  
5 possibility that the person may be required to reimburse the state or local governments for costs attributable  
6 to the adjudication, disposition, supervision, care, custody, and treatment of the youth and may be required  
7 to participate in counseling, treatment, or other support services.

8 (3) A youth's parents or guardians are obligated to assist and support the youth court in  
9 implementing the court's orders concerning a youth under youth court jurisdiction, and the parents or  
10 guardians are subject to the court's contempt powers if they fail to do so."

11  
12 **Section 29.** Section 41-5-521, MCA, is amended to read:

13 **"41-5-521. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine  
14 whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses  
15 alleged in the petition, the youth or the youth's parent, guardian, or attorney may demand a jury trial on  
16 the contested offenses. In the absence of a demand, a jury trial is waived. If the youth denies some  
17 offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court  
18 judge. The adjudicatory hearing must be set immediately and accorded a preferential priority.

19 (2) An adjudicatory hearing must be held to determine whether the contested offenses are  
20 supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in  
21 need of ~~supervision~~ intervention. If the hearing is before a jury, the jury's function is to determine whether  
22 the youth committed the contested offenses. If the hearing is before the youth court judge without a jury,  
23 the judge shall make and record findings on all issues. If the allegations of the petitions are not established  
24 at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

25 (3) An adjudicatory hearing must be recorded verbatim by whatever means the court considers  
26 appropriate.

27 (4) The youth charged in a petition must be present at the hearing and, if brought from detention  
28 to the hearing, may not appear clothed in institutional clothing.

29 (5) In a hearing on a petition under this section, the general public may not be excluded, except  
30 that in the court's discretion, the general public may be excluded if the petition does not allege that the

1 youth is delinquent.

2 (6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the  
3 hearing required by this section, a youth is found to be a delinquent youth or a youth in need of ~~supervision~~  
4 intervention, the court shall schedule a dispositional hearing under this chapter.

5 (7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title  
6 25, chapter 7, part 2, and in Rule 47, M.R.Civ.P."

7  
8 **Section 30.** Section 41-5-522, MCA, is amended to read:

9 **"41-5-522. Dispositional hearing -- contributions by parents or guardians for expenses.** (1) As soon  
10 as practicable after a youth is found to be a delinquent youth or a youth in need of ~~supervision~~ intervention,  
11 the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the  
12 financial ability of the youth's parents or guardians to pay a contribution for the cost of the adjudication,  
13 disposition, supervision, care, commitment, and treatment of the youth as required in 41-5-523 or [section  
14 33], including the costs of necessary medical, dental, and other health care.

15 (2) Before conducting the dispositional hearing, the court shall direct that a social summary, family  
16 assessment, or predisposition report be made in writing by a probation officer concerning the youth, the  
17 youth's family, the youth's environment, and other matters relevant to the need for care or rehabilitation  
18 or disposition of the case. The youth court may have the youth examined, and the results of the  
19 examination must be made available to the court as part of the social summary, family assessment, or  
20 predisposition report. The court may order the examination of a parent or guardian whose ability to care  
21 for or supervise a youth is at issue before the court. The results of the examination must be included in the  
22 social summary, family assessment, or predisposition report. The youth or the youth's parents, guardian,  
23 or counsel has the right to subpoena all persons who have prepared any portion of the social summary,  
24 family assessment, or predisposition report and has the right to cross-examine the parties at the  
25 dispositional hearing.

26 (3) Defense counsel must be furnished with a copy of the social summary, family assessment, or  
27 predisposition report and psychological report prior to the dispositional hearing.

28 (4) The dispositional hearing must be conducted in the manner set forth in subsections (3), (4), and  
29 (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving  
30 the interests of the youth and the public. The evidence must include but is not limited to the social

summary, family assessment, and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth or the youth's parents or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

~~(6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:~~

~~(a) age of the youth;~~

~~(b) ability of the youth to pay;~~

~~(c) ability of the parents, legal guardian, or those that contributed to the youth's delinquency or need for supervision to pay;~~

~~(d) amount of damage to the victim; and~~

~~(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered in any case."~~

**NEW SECTION. Section 31. Restitution.** (1) In determining whether restitution, as authorized by 41-5-403 and 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) the age of the youth;

(b) the ability of the youth to pay;

(c) the ability of the parents, guardian, or those that contributed to the youth's delinquency or need for supervision to pay;

(d) the amount of damage to the victim; and

(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered.

(2) Restitution paid by a youth or a youth's parents or guardians is subject to subrogation as provided in 46-18-248.

**Section 32.** Section 41-5-523, MCA, is amended to read:

**"41-5-523. Disposition of youth in need of intervention or youth who violate informal consent adjustments—sentence to correctional facility—commitment to department—placement and evaluation**

~~of youth restrictions.~~ (1) If a youth is found to be a delinquent youth or a youth in need of supervision intervention or to have violated an informal consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

~~(a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);~~

~~(b)(1) place the youth on probation;~~ The youth court shall retain jurisdiction in a disposition under this subsection.

~~(c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless recommended by the youth placement committee.~~

~~(d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and 46-23-506;~~

~~(e)(2)~~ place the youth in an in-state residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. The judge may not place the youth in an in-state residence unless the department informs the judge that resources are available for placement of the youth at that residence.

~~(f)(3)~~ commit the youth to the department; with the following conditions:

(a) In an order committing a youth to the department:

~~(i)~~ the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home;

~~(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.~~

1        (b) The department may not place a youth in need of intervention, a youth adjudicated delinquent  
2 for commission of an act that would not be an offense if committed by an adult, or a youth who violates  
3 an informal consent adjustment in a state youth correctional facility.

4        ~~(g)(4)~~ order restitution for damages that result from the offense for which the youth is disposed  
5 by the youth or the youth's parents or guardians;

6        ~~(h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense~~  
7 ~~if committed by an adult;~~

8        ~~(i)(5)~~ require the performance of community service;

9        ~~(j)(6)~~ require the youth, the youth's parents or guardians, or the persons having legal custody of  
10 the youth to receive counseling services;

11        ~~(k)(7)~~ require the medical and psychological evaluation of the youth, the youth's parents or  
12 guardians, or the persons having legal custody of the youth;

13        ~~(l)(8)~~ require the parents, guardians, or other persons having legal custody of the youth to furnish  
14 services the court may designate;

15        ~~(m)(9)~~ order further care, treatment, evaluation, or relief that the court considers beneficial to the  
16 youth and the community and that does not obligate funding from the department for services outside the  
17 state of Montana without the department's approval, except that a youth may not be placed by a youth  
18 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to  
19 subsection (1)(f) (3) of this section, place a youth in a residential treatment facility.

20        ~~(n)(10)~~ subject to the provisions of [section 35], commit the youth to a mental health facility if,  
21 based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth  
22 is seriously mentally ill as defined in 53-21-102; The youth is entitled to all rights provided by 53-21-114  
23 through 53-21-119.

24        ~~(i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be~~  
25 ~~committed or sentenced to a state youth correctional facility.~~

26        ~~(ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing~~  
27 ~~to a state youth correctional facility must be moved to a more appropriate placement in response to the~~  
28 ~~youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.~~

29        ~~(e)(11)~~ place the youth under home arrest as provided in Title 46, chapter 18, part 10;

30        (12) order the youth or the youth's parents or guardians to pay a contribution covering all or a part



1 of the costs for the adjudication, disposition, supervision, care, custody, and treatment of the youth,  
2 including the costs of court-appointed counseling;

3 (13) order the youth or the youth's parents or guardians to pay a contribution covering all or a part  
4 of the costs of a victim's counseling;

5 (14) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable  
6 program or facility with the following conditions:

7 (a) The court may not order placement for evaluation at a youth correctional facility of a youth who  
8 has committed an offense that would not be a criminal offense if committed by an adult or a youth who  
9 has violated an informal consent adjustment.

10 (b) The court may require the youth's parents or guardians to pay a contribution covering all or a  
11 part of the costs of the evaluation if the court determines after an examination of financial ability that the  
12 parents or guardians are able to pay the contribution.

13 (15) order placement of a youth in a youth assessment placement for up to 10 days.

14 ~~(2) When a youth is committed to the department, the department shall determine the appropriate~~  
15 ~~placement and rehabilitation program for the youth after considering the recommendations made under~~  
16 ~~41-5-527 by the youth placement committee. Placement is subject to the following limitations:~~

17 ~~(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would~~  
18 ~~not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.~~

19 ~~(b) A youth may not be held in a state youth correctional facility for a period of time in excess of~~  
20 ~~the maximum period of imprisonment that could be imposed on an adult convicted of the offense or~~  
21 ~~offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the~~  
22 ~~power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.~~

23 ~~(c) A youth may not be placed in or transferred to a penal institution or other facility used for the~~  
24 ~~execution of sentence of adults convicted of crimes.~~

25 ~~(3) A youth placed in a state youth correctional facility or other facility or program operated by the~~  
26 ~~department or who signs an aftercare agreement under 52-5-126 must be supervised by the department.~~  
27 ~~A youth who is placed in any other placement by the department, the youth court, or the youth court's~~  
28 ~~juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction~~  
29 ~~over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by~~  
30 ~~the youth probation officer includes but is not limited to:~~

1 ~~(a) submitting information and documentation necessary for the person, committee, or team that~~  
2 ~~is making the placement recommendation to determine an appropriate placement for the youth;~~

3 ~~(b) securing approval for payment of special education costs from the youth's school district of~~  
4 ~~residence or the office of public instruction, as required in Title 20, chapter 7, part 4;~~

5 ~~(c) submitting an application to a facility in which the youth may be placed; and~~

6 ~~(d) case management of the youth.~~

7 ~~(4) The youth court may order a youth to receive a medical or psychological evaluation at any time~~  
8 ~~prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in~~  
9 ~~41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of~~  
10 ~~the evaluation, except as provided in subsection (5). A county may contract with the department or other~~  
11 ~~public or private agencies to obtain evaluation services ordered by the court.~~

12 ~~(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of~~  
13 ~~an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order~~  
14 ~~the youth's parents to pay all or part of the cost of the evaluation.~~

15 ~~(6) The youth court may not order placement or evaluation of a youth at a state youth correctional~~  
16 ~~facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that~~  
17 ~~is transferable to criminal court under 41-5-206.~~

18 ~~(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth~~  
19 ~~is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.~~

20 ~~(8) An order of the court may be modified at any time. In the case of a youth committed to the~~  
21 ~~department, an order pertaining to the youth may be modified only upon notice to the department and~~  
22 ~~subsequent hearing.~~

23 ~~(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional~~  
24 ~~judgment copies of medical reports, social history material, education records, and any other clinical,~~  
25 ~~predisposition, or other reports and information pertinent to the care and treatment of the youth.~~

26 ~~(10) If a youth is committed to the department, the court shall examine the financial ability of the~~  
27 ~~youth's parents or guardians to pay a contribution covering all or part of the costs for the care,~~  
28 ~~commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health~~  
29 ~~care.~~

30 ~~(11) If the court determines that the youth's parents or guardians are financially able to pay a~~

1 ~~contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay~~  
2 ~~an amount based on the uniform child support guidelines adopted by the department of public health and~~  
3 ~~human services pursuant to 40-5-209.~~

4 ~~(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each~~  
5 ~~modification of an existing order are enforceable by immediate or delinquency income withholding, or both,~~  
6 ~~under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is~~  
7 ~~nevertheless subject to withholding for the payment of the contribution without need for an amendment~~  
8 ~~of the support order or for any further action by the court.~~

9 ~~(b) A court ordered exception from contributions under this section must be in writing and be~~  
10 ~~included in the order. An exception from the immediate income withholding requirement may be granted~~  
11 ~~if the court finds there is:~~

12 ~~(i) good cause not to require immediate income withholding; or~~

13 ~~(iii) an alternative arrangement between the department and the person who is ordered to pay~~  
14 ~~contributions.~~

15 ~~(c) A finding of good cause not to require immediate income withholding must, at a minimum, be~~  
16 ~~based upon:~~

17 ~~(i) a written determination and explanation by the court of the reasons why the implementation of~~  
18 ~~immediate income withholding is not in the best interests of the youth; and~~

19 ~~(iii) proof of timely payment of previously ordered support in cases involving modification of~~  
20 ~~contributions ordered under this section.~~

21 ~~(d) An alternative arrangement must:~~

22 ~~(i) provide sufficient security to ensure compliance with the arrangement;~~

23 ~~(iii) be in writing and be signed by a representative of the department and the person required to~~  
24 ~~make contributions; and~~

25 ~~(iii) if approved by the court, be entered into the record of the proceeding.~~

26 ~~(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,~~  
27 ~~the court may modify its order for the payment of contributions required under subsection (11).~~

28 ~~(14) (a) If the court orders the payment of contributions under this section, the department shall~~  
29 ~~apply to the department of public health and human services for support enforcement services pursuant~~  
30 ~~to Title IV-D of the Social Security Act.~~

~~(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."~~

**NEW SECTION. Section 33. Disposition -- delinquent youth -- restrictions.** (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-523;

(b) subject to 41-5-523(3)(b) or (14)(a), [section 34(1)], and [section 35(2)], sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. Except as provided in subsection (2), the sentencing judge may not place limitations on the release unless recommended by the youth placement committee.

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a violation of 45-5-502 through 45-5-504, or 45-5-507 if committed by an adult, to register as a sex offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender or a juvenile determined to have violated a consent decree with petition or a condition of probation, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sex offense, the youth court may require successful

1 completion of sex offender treatment before a youth is discharged.

2  
3 **NEW SECTION. Section 34. Disposition -- commitment to department -- restrictions on placement.**

4 When a youth is committed to the department, the department shall determine the appropriate placement  
5 and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by  
6 the youth placement committee. Placement is subject to the limitations contained in 41-5-523(3)(b) and  
7 the following limitations:

8 (1) A youth may not be held in a state youth correctional facility for a period of time in excess of  
9 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or  
10 offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the  
11 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

12 (2) A youth may not be placed in or transferred to a state adult correctional facility or other facility  
13 used for the execution of sentences of adults convicted of crimes.

14  
15 **NEW SECTION. Section 35. Disposition -- finding of mentally ill or seriously mentally ill -- rights**  
16 **-- limitation on placement.** (1) A youth who is found to be seriously mentally ill, as defined in 53-21-102,  
17 is entitled to all rights provided by 53-21-114 through 53-21-119.

18 (2) A youth who, prior to placement or sentencing, is found to be mentally ill, as defined in  
19 41-5-103, or seriously mentally ill, as defined in 53-21-102, may not be committed or sentenced to a state  
20 youth correctional facility.

21 (3) A youth who is found to be mentally ill or seriously mentally ill after placement in or sentencing  
22 to a state youth correctional facility must be moved to a more appropriate placement in response to the  
23 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

24  
25 **NEW SECTION. Section 36. Disposition -- commitment to department -- supervision.** (1) A youth  
26 placed in a state youth correctional facility or other facility or program operated by the department or who  
27 signs an aftercare agreement under 52-5-126 must be supervised by the department.

28 (2) A youth who is placed in any other placement by the department, the youth court, or the youth  
29 court's juvenile probation officer must be supervised by the probation officer of the youth court having  
30 jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department.

Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

**NEW SECTION. Section 37. Disposition -- commitment to department -- transfer of records.**

Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, family assessment material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

**NEW SECTION. Section 38. Disposition -- medical or psychological evaluation of youth.** (1) The

youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (2). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(2) The youth court shall determine the financial ability of the youth's parents or guardians to pay the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.

(3) Subject to 41-5-523(14)(a), the youth court may not order an evaluation or placement of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to district court under 41-5-206.

(4) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

**NEW SECTION. Section 39. Modification of court orders -- notice to department -- hearing.** (1)

1 An order of the court may be modified at any time.

2 (2) In the case of a youth committed to the department, an order pertaining to the youth may be  
3 modified only upon notice to the department and a subsequent hearing.

4  
5 **NEW SECTION. Section 40. Contribution for costs -- order for contribution -- exceptions ..**  
6 **collection.** (1) If a youth is committed to the department, the court shall examine the financial ability of  
7 the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication,  
8 disposition, supervision, care, commitment, and treatment of the youth, including the costs of necessary  
9 medical, dental, and other health care.

10 (2) If the court determines that the youth's parents or guardians are financially able to pay a  
11 contribution as provided in subsection (1), the court shall order the youth's parents or guardians to pay an  
12 amount attributable to care, custody, and treatment based on the uniform child support guidelines adopted  
13 by the department of public health and human services pursuant to 40-5-209.

14 (3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each  
15 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,  
16 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is  
17 nevertheless subject to withholding for the payment of the contribution without need for an amendment  
18 of the support order or for any further action by the court.

19 (b) A court-ordered exception from contributions under this section must be in writing and must  
20 be included in the order. An exception from the immediate income withholding requirement may be granted  
21 if the court finds that there is:

22 (i) good cause not to require immediate income withholding; or  
23 (ii) an alternative arrangement between the department and the person who is ordered to pay  
24 contributions.

25 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be  
26 based upon:

27 (i) a written determination and explanation by the court of the reasons why the implementation of  
28 immediate income withholding is not in the best interests of the youth; and

29 (ii) proof of timely payment of previously ordered support in cases involving modification of  
30 contributions ordered under this section.

1 (d) An alternative arrangement must:

2 (i) provide sufficient security to ensure compliance with the arrangement;

3 (ii) be in writing and be signed by a representative of the department and the person required to  
4 make contributions; and

5 (iii) if approved by the court, be entered into the record of the proceeding.

6 (4) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,  
7 the court may modify its order for the payment of contributions required under subsection (2).

8 (5) (a) If the court orders the payment of contributions under this section, the department shall  
9 apply to the department of public health and human services for support enforcement services pursuant  
10 to Title IV-D of the Social Security Act.

11 (b) The department of public health and human services may collect and enforce a contribution  
12 order under this section by any means available under law, including the remedies provided for in Title 40,  
13 chapter 5, parts 2 and 4.

14  
15 **Section 41.** Section 41-5-524, MCA, is amended to read:

16 **"41-5-524. Consent decree with petition.** (1) ~~At any time (a)~~ Subject to the provisions of  
17 subsection (2), after the filing of a petition alleging that a youth is a delinquent youth or a youth in need  
18 of supervision under 41-5-501 and before the entry of a judgment, the court may, on motion of counsel  
19 for the youth or on the court's own motion, suspend the proceedings and continue the youth under  
20 supervision under terms and conditions negotiated with probation services and agreed to by all necessary  
21 parties. The court's order continuing the child under supervision under this section shall be is known as a  
22 "consent decree". ~~The~~ Except as provided in subsection (1)(b), the procedures used and dispositions  
23 permitted under this section ~~shall~~ must conform to the procedures and dispositions specified in 41-5-401  
24 through 41-5-403 relating to consent adjustments without petition and the responsibility of the youth's  
25 parents or guardians to pay a contribution for the costs of placement in substitute care.

26 (b) A youth may be placed in detention for up to 10 days on a space-available basis.

27 (2) A consent decree under this section may not be used by the court unless the youth admits guilt  
28 for any charges of an offense set forth in the petition and accepts responsibility for the youth's actions.

29 ~~(2)(3)~~ If the youth or his the youth's counsel objects to a consent decree, the court shall proceed  
30 to findings, adjudication, and disposition of the case.



~~(3)~~(4) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging that the youth is a delinquent youth or a youth in need of ~~supervision~~ intervention is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition ~~shall~~ must be continued to conclusion as if the consent decree had never been entered.

~~(4)~~(5) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition ~~shall~~ must be dismissed with prejudice. ~~Nothing in this~~ This subsection precludes ~~precludes~~ does not preclude a civil suit against the youth for damages arising from ~~his~~ the youth's conduct.

~~(5)~~(6) In all cases ~~where~~ in which the terms of the consent decree ~~shall~~ extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report ~~which~~ shall that must be reviewed by the court.

(7) A consent decree with petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult."

**Section 42.** Section 41-5-525, MCA, is amended to read:

**"41-5-525. Youth placement committees -- composition.** (1) In each judicial district, the department shall establish a youth placement committee for the purposes of:

- (a) recommending an appropriate placement of a youth referred to the department under 41-5-403;
- or
- (b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the custody of the department under 41-5-523. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility.

(2) The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth. Members may include:

- (a) two representatives of the department;

(b) a representative of the department of public health and human services;

(c) either the chief probation officer or the youth's probation officer;

(d) a mental health professional;

(e) a representative of a school district located within the boundaries of the judicial district who must have personal knowledge of and experience with the youth;

(f) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters;

(g) a parent or guardian; and

(h) a youth services provider.

(3) Committee members serve without compensation.

(4) Notwithstanding the provisions of 41-5-527, the committee may be convened by the department or the probation officer of the youth court.

(5) If a representative of a school district is not included on the committee, the person who convened the committee shall inform the school district of the final placement decision for the child."

**Section 43.** Section 41-5-530, MCA, is amended to read:

**"41-5-530. Parental contributions account -- allocation of proceeds.** (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under 41-3-406, 41-5-403, 41-5-523, or 41-5-524 for care, placement, and treatment must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department of public health and human services to carry out its duties under 52-1-103."

**Section 44.** Section 41-5-533, MCA, is amended to read:

**"41-5-533. Probation revocation -- disposition.** (1) A youth on probation incident to an adjudication that ~~he~~ the youth is a delinquent youth or a youth in need of ~~supervision~~ intervention and ~~who~~ violates that the youth has violated a term of ~~such~~ probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation ~~shall~~ must be done by filing in the original proceeding a petition styled "petition to revoke probation".

(2) Petitions to revoke probation ~~shall~~ must be screened, reviewed, and prepared in the same manner and ~~shall~~ must contain the same information as petitions alleging delinquency or need of supervision intervention. Procedures of the Montana Youth Court Act regarding taking into custody and detention ~~shall~~ apply. The petition ~~shall~~ must state the terms of probation alleged to have been violated and the factual basis for ~~such~~ the allegations.

(3) The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult, and the hearing ~~shall~~ must be before the youth court without a jury. In all other respects, proceedings to revoke probation are governed by the procedures, rights, and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of supervision intervention. If a youth is found to have violated a term of his probation, the youth court may make any judgment of disposition that could have been made in the original case."

**Section 45.** Section 41-5-603, MCA, is amended to read:

**"41-5-603. Youth court and department records.** (1) Except as provided in subsection (2), all youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection until the records are sealed under 41-5-604.

(2) Social, medical, and psychological records, family assessment materials, predispositional studies, and supervision records of probationers, ~~and any report, charge, or allegation that is not adjudicated pursuant to this chapter~~ are open only to the following:

- (a) the youth court and its professional staff;
- (b) representatives of any agency providing supervision and having legal custody of a youth;
- (c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- (d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;
- (e) the county attorney;
- (f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203; and

(i) persons allowed access to the records referred to under 45-5-624(7).

(3) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.

(4) After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority."

**Section 46.** Section 41-5-605, MCA, is amended to read:

**"41-5-605. Youth court records -- public record.** Except as provided in 41-5-603, all youth court records on file with the clerk of court related to a youth who is alleged or found to be a youth in need of ~~supervision~~ intervention or a delinquent youth are a public record until the record is sealed under 41-5-604."

**Section 47.** Section 41-5-802, MCA, is amended to read:

**"41-5-802. Shelter care facilities.** (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(2) A shelter care facility may be used to provide an appropriately physically restricting setting for youth alleged or adjudicated to be a delinquent youth, a youth in need of ~~supervision~~ intervention, or a youth in need of care.

(3) A shelter care facility must be physically separated from any facility housing adults accused or convicted of criminal offenses.

(4) State appropriations and federal funds may be received by ~~the~~ counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

(5) A shelter care facility must be furnished in a comfortable manner.

1 (6) A shelter care facility may be operated in conjunction with a youth detention facility."

2  
3 **Section 48.** Section 41-5-1004, MCA, is amended to read:

4 **"41-5-1004. Distribution of grants -- limitation of funding -- restrictions on use.** (1) The board shall  
5 award grants on an equitable basis, giving preference to services that ~~will~~ are to be used on a regional  
6 basis.

7 (2) The board shall award grants to eligible counties:

8 (a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure  
9 detention; or

10 (b) on a matching basis in an amount not to exceed:

11 (i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to  
12 secure detention, except for shelter care. Shelter care costs must be paid as provided by law.

13 (ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention  
14 or shelter care facilities, including regional detention facilities.

15 (3) Based on funding available after the board has funded block grants under subsection (2), the  
16 board shall, in cases of extreme hardship in which the transfer of youth court cases to the adult system  
17 has placed considerable financial strain on a county's resources, award grants to eligible counties to fund  
18 up to 75% of the actual costs of secure detention of youth awaiting transfer. Hardship cases will be  
19 addressed at the end of the fiscal year and will be awarded by the board based upon a consideration of the  
20 applicant county's past 3 years' expenditures for youth detention and upon consideration of the particular  
21 case or cases that created the hardship expenditure for which the hardship grant is requested.

22 (4) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost  
23 of evaluations must be paid as provided for in ~~41-5-523~~ [section 38]."

24  
25 **Section 49.** Section 41-5-1008, MCA, is amended to read:

26 **"41-5-1008. Rulemaking authority.** The board may adopt rules necessary to implement the  
27 provisions of ~~41-5-103(13)~~, 41-5-812, and 41-5-1001 through 41-5-1008 and to establish requirements  
28 for approved holdovers consistent with the definition of holdover provided in 41-5-103."

29  
30 **Section 50.** Section 41-5-1104, MCA, is amended to read:

1       **"41-5-1104. Disposition in extended jurisdiction prosecutions.** (1) If a youth in an extended  
2 jurisdiction prosecution pleads guilty to or is found guilty of an offense described in 41-5-1102(1)(b), the  
3 court shall:

4           (a) impose one or more juvenile dispositions under 41-5-523 or [section 33]; and

5           (b) impose an adult criminal sentence, the execution of which must be stayed on the condition that  
6 the youth not violate the provisions of the disposition order and not commit a new offense. If the youth  
7 violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed  
8 as provided in 41-5-1105.

9           (2) Except as provided in subsection (3), if a youth in an extended jurisdiction prosecution is  
10 convicted of an offense not described in 41-5-1102(1)(b), the court shall adjudicate the youth delinquent  
11 and order a disposition under ~~41-5-523~~ [section 33].

12           (3) If a youth in an extended jurisdiction prosecution pleads guilty to an offense not described in  
13 41-5-1102(1)(b), the court may impose, with the youth's consent, a disposition provided under subsection  
14 (1)(b) of this section. If the youth does not consent to disposition under subsection (1)(b), the court shall  
15 impose a disposition as provided under subsection (2)."

16  
17       **Section 51.** Section 41-5-1105, MCA, is amended to read:

18       **"41-5-1105. Execution of adult sentence -- exception -- transfer to district court.** (1) If a court  
19 has imposed on a youth an adult criminal sentence stayed under 41-5-1104(1)(b) and the youth violates  
20 the conditions of the stay or is alleged to have committed a new offense, the court may, without notice,  
21 direct that the youth be taken into immediate custody and revoke the stay. The court shall notify the youth  
22 in writing of the reasons for the revocation.

23           (2) (a) If the youth challenges the reasons for the revocation, the court shall hold a summary  
24 hearing at which the youth is entitled to be heard and represented by counsel.

25           (b) After the hearing, if the court finds by a preponderance of the evidence presented that the  
26 conditions of the stay have been violated, the court shall:

27           (i) order execution of the sentence imposed under 41-5-1104(1)(b); or

28           (ii) continue the stay and make written findings regarding the mitigating factors that justify  
29 continuing the stay.

30           (3) If the stay of an adult sentence is revoked under this section, jurisdiction must be transferred

1 to district court for execution of the sentence, subject to ~~41-5-206(8) and (9)~~ 41-5-206(4) and (5)."

2

3 **Section 52.** Section 45-5-624, MCA, is amended to read:

4 **"45-5-624. Unlawful attempt to purchase or possession of an intoxicating substance**  
5 **interference with sentence or court order.** (1) A person under ~~the age of~~ 21 years of age commits the  
6 offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's  
7 possession an intoxicating substance. The person need not be consuming or in possession of the  
8 intoxicating substance at the time of arrest to violate this subsection. A person does not commit the  
9 offense if the person consumes or gains possession of the beverage because it was lawfully supplied to  
10 the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic  
11 beverages.

12 (2) In addition to any disposition by the youth court under 41-5-523, a person under 18 years of  
13 age who is convicted of the offense of possession of an intoxicating substance shall:

14 (a) for the first offense, be fined an amount not to exceed \$100 and:

15 (i) have the person's driver's license confiscated by the court for not less than 30 days and not  
16 more than 90 days and be ordered not to drive during that period if the person was driving or was  
17 otherwise in actual physical control of a motor vehicle when the offense occurred;

18 (ii) be ordered to perform community service if a community service program is available; and

19 (iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered  
20 community service, if any is available, all costs of participation in a community-based substance abuse  
21 information course, if one is available;

22 (b) for a second offense, be fined an amount not to exceed \$200 and:

23 (i) have the person's driver's license suspended for not less than 60 days and not more than 120  
24 days;

25 (ii) be ordered to perform community service if a community service program is available; and

26 (iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered  
27 community service, if any is available, all costs of participation in a community-based substance abuse  
28 information course, if one is available;

29 (c) for a third or subsequent offense, be fined an amount not less than \$300 or more than \$500  
30 and:

1 (i) have the person's driver's license suspended for not less than 120 days and not more than 1  
2 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle  
3 when the offense occurred, have the person's driver's license revoked for 1 year or until the person reaches  
4 the age of 18, whichever occurs last;

5 (ii) be ordered to complete and pay, either directly with money or indirectly through court-ordered  
6 community service, if any is available, all costs of participation in a community-based substance abuse  
7 information course, if one is available, which may include alcohol or drug treatment, or both, approved by  
8 the department of corrections, if determined by the court to be appropriate.

9 (3) A person 18 years of age or older who is convicted of the offense of possession of an  
10 intoxicating substance shall:

11 (a) for a first offense, be fined an amount not to exceed \$50 and be ordered to perform community  
12 service if a community service program is available;

13 (b) for a second offense, be fined an amount not to exceed \$100 and:

14 (i) be ordered to perform community service if a community service program is available; and

15 (ii) have the person's driver's license suspended for not more than 60 days if the person was driving  
16 or otherwise in actual physical control of a motor vehicle when the offense occurred;

17 (c) for a third or subsequent offense, be fined an amount not to exceed \$200 and:

18 (i) be ordered to perform community service if a community service program is available;

19 (ii) have the person's driver's license suspended for not more than 120 days if the person was  
20 driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

21 (iii) be ordered to complete an alcohol information course at an alcohol treatment program approved  
22 by the department of corrections, which may, in the sentencing court's discretion and upon  
23 recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both;  
24 and

25 (iv) in the discretion of the court be imprisoned in the county jail for a term not to exceed 6 months.

26 (4) A person under ~~the age of 21~~ years of age commits the offense of attempt to purchase an  
27 intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person  
28 convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$50  
29 if the person was 18 years of age or older at the time the offense was committed or \$100 if the person  
30 was under 18 years of age at the time that the offense was committed.



1 (5) A defendant who fails to comply with a sentence and is under 21 years of age and was under  
2 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings  
3 for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged  
4 youth in need of ~~supervision~~ intervention as defined in 41-5-103. The youth court may enter its judgment  
5 under 41-5-523.

6 (6) A person commits the offense of interference with a sentence or court order if the person  
7 purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section  
8 or a youth court disposition order for a youth found to have violated this section and upon conviction shall  
9 be fined \$100 or imprisoned in the county jail for 10 days, or both.

10 (7) A conviction or youth court adjudication under this section must be reported by the court to  
11 the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses  
12 committed but may not be considered part of the person's driving record for insurance purposes unless a  
13 second or subsequent conviction or adjudication under this section occurs. (See compiler's comments for  
14 contingent termination of certain text.)"

15  
16 **Section 53.** Section 45-5-637, MCA, is amended to read:

17 **"45-5-637. Tobacco possession or consumption by persons under 18 years of age prohibited --**  
18 **penalties.** (1) A person under 18 years of age who knowingly possesses or consumes a tobacco product,  
19 as defined in 16-11-302, commits the offense of possession or consumption of a tobacco product.

20 (2) A person convicted of possession or consumption of a tobacco product:

21 (a) shall be fined \$35 for a first offense, no less than \$75 or more than \$100 for a second offense,  
22 and no less than \$100 or more than \$250 for a third or subsequent offense; or

23 (b) may be adjudicated on a petition alleging the person to be a youth in need of ~~supervision~~  
24 intervention under the provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

25 (3) A person convicted of possession or consumption of a tobacco product may also be required  
26 to perform community service or to attend a tobacco cessation program.

27 (4) The fines collected under subsection (2) must be deposited to the credit of the general fund of  
28 the local government that employs the arresting officer, or if the arresting officer is an officer of the  
29 highway patrol, the fines must be credited to the county general fund in the county in which the arrest was  
30 made."

1           **Section 54.** Section 46-18-256, MCA, is amended to read:

2           **"46-18-256. Sexually transmitted disease testing -- test procedure.** (1) Following entry of  
3 judgment, a person convicted of a sexual offense, as defined in 46-23-502, must, at the request of the  
4 victim of the sexual offense or the parent or guardian of the victim, if the victim is a minor, be administered  
5 standard testing according to currently accepted protocol, using guidelines established by the centers for  
6 disease control, U.S. department of health and human services, to detect in the person the presence of  
7 antibodies indicative of the presence of human immunodeficiency virus (HIV) or other sexually transmitted  
8 diseases, as defined in 50-18-101.

9           (2) Arrangements for the test required by subsection (1) must be made by the county attorney of  
10 the county in which the person was convicted. The test must be conducted by a health care provider, as  
11 defined in 50-16-504.

12           (3) The county attorney of the county in which the person was convicted shall release the  
13 information concerning the test results to:

14           (a) the convicted person; and

15           (b) the victim of the offense committed by the convicted person or to the parent or guardian of the  
16 victim if the victim is a minor.

17           (4) At the request of the victim of a sexual offense or the parent or guardian of the victim if the  
18 victim is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance  
19 with applicable law), and referral for appropriate health care and support services.

20           (5) For purposes of this section, "convicted" includes an adjudication, under the provisions of  
21 41-5-521, finding a youth to be a delinquent youth or a youth in need of ~~supervision~~ intervention.

22           (6) The provisions of the AIDS Prevention Act, Title 50, chapter 16, part 10, do not apply to this  
23 section."  
24

25           **Section 55.** Section 46-24-207, MCA, is amended to read:

26           **"46-24-207. Victims and witnesses of juvenile felony offenses -- consultation -- notification of**  
27 **proceedings.** (1) The attorney general shall ensure that the services and assistance that must be provided  
28 under ~~this chapter~~ Title 46, chapter 24, to a victim or witness of a crime are also provided to the victim  
29 or witness of a juvenile felony offense.

30           (2) In a proceeding filed under Title 41, chapter 5, part 5, the county attorney or a designee shall

1 consult with the victim of a juvenile felony offense ~~or, in the case of a minor victim or a homicide victim,~~  
2 ~~with the victim's family~~ regarding the disposition of the case, including:

3 (a) a dismissal of the petition filed under 41-5-501;

4 (b) a reduction of the charge to misdemeanor;

5 (c) the release of the youth from detention or shelter care pending the adjudicatory hearing; and

6 (d) the disposition of the youth.

7 (3) (a) Whenever possible, a person described in subsection (3)(b) who provides the youth court  
8 with a current address and telephone number must receive prompt advance notification of youth court case  
9 proceedings, including:

10 (i) the filing of a petition under 41-5-501;

11 (ii) the release of the youth from detention or shelter care; and

12 (iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent  
13 decree under 41-5-524, the setting of a date for the adjudicatory hearing under 41-5-521, the setting of  
14 a date for the dispositional hearing under 41-5-522, the disposition made, and the release of the youth from  
15 a youth correctional facility.

16 (b) A person entitled to notification under this subsection (3) must be a victim, as defined in  
17 41-5-103, of a juvenile felony offense, ~~an adult relative of the victim if the victim is a minor, or an adult~~  
18 ~~relative of a homicide victim.~~

19 (c) The county attorney or a designee that provides the consultation regarding the disposition of  
20 a case required in subsection (2) shall give the victim the opportunity to provide the victim's current  
21 telephone number and address and shall forward the information to the youth court for notification purposes  
22 under this subsection (3).

23 (d) The court shall provide to the department of justice the list of people entitled to notification  
24 under this subsection (3), and the department of justice is responsible to provide the notification.

25 (4) For purposes of this section, "juvenile felony offense" means an offense committed by a  
26 juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense  
27 for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103."

28  
29 **Section 56.** Section 52-2-211, MCA, is amended to read:

30 **"52-2-211. County interdisciplinary child information team.** (1) The following persons and agencies

operating within a county may by written agreement form a county interdisciplinary child information team

- (a) the youth court;
- (b) the county attorney;
- (c) the department of public health and human services;
- (d) the county superintendent of schools;
- (e) the sheriff;
- (f) the chief of any police force;
- (g) the superintendents of public school districts; and
- (h) the department of corrections.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the ~~information~~ team:

- (a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;
- (b) entities operating private elementary and secondary schools;
- (c) attorneys; and
- (d) a person or entity that has or may have a legitimate interest in one or more children that the ~~information~~ team will serve.

(3) (a) The members of the ~~information~~ team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

(b) A member of an auxiliary team must be a person who has personal knowledge of or experience with the child or children in the member's respective field.

(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused, or neglected, ~~and delinquent~~ children, delinquent youth, and youth in need of ~~supervision~~ intervention. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205 or 41-5-603(2) may not be disseminated beyond the team.

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters

1 necessary to the purpose and functions of the team.

2 (6) The terms of the written agreement must state how the team will coordinate its efforts with  
3 interdisciplinary child protective teams as provided in 41-3-108 and youth placement committees as  
4 provided for in 41-5-525."

5  
6 **Section 57.** Section 52-5-101, MCA, is amended to read:

7 **"52-5-101. Establishment of state youth correctional facilities -- prohibitions.** (1) The department  
8 of corrections, within the annual or biennial budgetary appropriation, may establish, maintain, and operate  
9 facilities to properly diagnose, care for, train, educate, and rehabilitate youth in need of these services. The  
10 youth must be 10 years of age or older and under 19 years of age. The facilities include but are not limited  
11 to the state youth correctional facilities at ~~the Mountain View school in Helena and the Pine Hills school~~  
12 in Miles City.

13 (2) A youth alleged or found to be a youth in need of ~~supervision~~ intervention may not be placed  
14 in a state youth correctional facility as defined in 41-5-103."

15  
16 **Section 58.** Section 53-1-201, MCA, is amended to read:

17 **"53-1-201. Purpose of department of corrections.** The department of corrections shall ~~utilize~~ use  
18 at maximum efficiency the resources of state government in a coordinated effort to:

19 (1) develop and maintain comprehensive services and programs in the field of adult and youth  
20 corrections; and

21 (2) provide for the care, protection, and mental and physical development of youth alleged to be  
22 youth in need of ~~supervision~~ intervention or delinquent youth who are referred or committed to the  
23 department."

24  
25 **Section 59.** Section 53-1-203, MCA, is amended to read:

26 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections  
27 shall:

28 (a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and rules for  
29 the admission, custody, transfer, and release of persons in department programs except as otherwise  
30 provided by law. However, rules adopted by the department may not amend or alter the statutory powers

1 and duties of the state board of pardons and parole.

2 (b) subject to the functions of the department of administration, lease or purchase lands for use  
3 by institutions and classify those lands to determine those that may be most profitably used for agricultural  
4 purposes, taking into consideration the needs of all institutions for the food products that can be grown  
5 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation  
6 of the persons confined in the institutions;

7 (c) contract with private, nonprofit Montana corporations to establish and maintain  
8 community-based prerelease centers for purposes of preparing inmates of the Montana state prison who  
9 are approaching parole eligibility or discharge for release into the community. The centers shall provide a  
10 less restrictive environment than the prison while maintaining adequate security. The centers must be  
11 operated in coordination with other department correctional programs, including the supervised release  
12 program provided for in Title 46, chapter 23, part 4. This subsection does not affect the department's  
13 authority to operate and maintain community-based prerelease centers.

14 (d) utilize the staff and services of other state agencies and units of the Montana university system,  
15 within their respective statutory functions, to carry out its functions under this title;

16 (e) propose programs to the legislature to meet the projected long-range needs of institutions,  
17 including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in  
18 institutions;

19 (f) encourage the establishment of programs at the local and institutional level for the rehabilitation  
20 and education of adult felony offenders;

21 (g) administer all state and federal funds allocated to the department for youth in need of  
22 ~~supervision~~ intervention and delinquent youth, as defined in 41-5-103;

23 (h) collect and disseminate information relating to youth in need of ~~supervision~~ intervention and  
24 delinquent youth;

25 (i) maintain adequate data on placements that it funds in order to keep the legislature properly  
26 informed of the specific information, by category, related to youth in need of ~~supervision~~ intervention and  
27 delinquent youth in out-of-home care facilities;

28 (j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need  
29 of ~~supervision~~ intervention and who are referred or committed to the department;

30 (k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility;  
and  
(m) use to maximum efficiency the resources of state government in a coordinated effort to:  
(i) provide for children in need of temporary protection or correctional services; and  
(ii) coordinate and apply the principles of modern institutional administration to the institutions in  
the department.

(2) The department and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c).

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of ~~supervision~~ intervention and delinquent youth in youth care facilities."

**NEW SECTION.** **Section 60. Repealer.** Section 41-5-310, MCA, is repealed.

**NEW SECTION.** **Section 61. Funding coordination.** For the purposes of Title 1, chapter 2, part 1, the funding for this bill is contained in \_\_ Bill No. \_\_ [LC 228].

**NEW SECTION.** **Section 62. Directions to code commissioner.** Wherever a reference to "youth in need of supervision" appears in the Montana Code Annotated or in legislation enacted by the 1997 legislature, the code commissioner is directed to change it to an appropriate reference to "youth in need of intervention".

**NEW SECTION.** **Section 63. Codification instruction.** (1) [Sections 31 and 33 through 40] are intended to be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to [sections 31 and 33 through 40].

(2) Section 46-24-207 is intended to be renumbered and codified as an integral part of Title 41, chapter 5, part 5.

**NEW SECTION.** **Section 64. Saving clause.** [This act] does not affect rights and duties that

1 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
2 act].

3

4 NEW SECTION. **Section 65. Effective date.** [This act] is effective July 1, 1997.

5

-END-



**CHAIRMAN CRIPPEN.** What happens if you don't have adequate juvenile facilities, and put a youth in an adult facility? Are we violating due process? **SENATOR HALLIGAN.** We are hoping early "plug-in" will save youths from becoming lost in the adult system, where there is little or no rehabilitation.

*{Tape: 1; Side: B; Approx. Time Count: #82.; Comments: None.}*

**SENATOR BARTLETT.** I want to hear from a representative of the Department of Corrections, Mr. Farriter, if possible, regarding the Department's attitude in dealing with juveniles. **Lois Adams, Department of Corrections.** The Department has taken no position on SB 99. In Section 5-23-45, MCA, a youth tried as an adult will go to the Women's Prison or to Pine Hills.

*{Tape: 1; Side: B; Approx. Time Count: #12.4; Comments: None.}*

**SENATOR BARTLETT.** I wanted to know what would be done preventively during the juvenile portion of the sentence. **Lois Adams** reiterated the "panoply of treatment available to the juvenile". **CHAIRMAN CRIPPEN.** You may need Director Day to answer this question. **Mike Farriter, Administrator, Community Corrections Division, Department of Correction.** We do not have a secure facility for juvenile girls now. We have a plan for secure care in Boulder, as they are now going to the Women's Prison. There are two problems: 1) the budget is earmarked only for adjudicated juveniles, and so we don't feel we can use those placement funds for youth adjudicated as adults to sent them out of state; 2) we can't send sex offenders to Pine Hills.

*{Tape: 1; Side: B; Approx. Time Count: #17; Comments: None.}*

Closing by Sponsor: **SENATOR THOMAS.** I would be happy to have Judge Larson visit with the Committee. As an example, a twelve-year-old in the Missoula area shot the owner of a pickup. The youth was stealing cigarettes from his pickup, and he hollered at the youth.

The law is designed to give the court system better ability to deal with these problems.

#### HEARING ON SB 48

Sponsor: **SENATOR MIKE SPRAGUE, SD 6, Billings.**

Proponents: **SENATOR MIKE HALLIGAN, District 34, Missoula**  
**Beth Baker, Department of Justice**  
**Pete Surdock, Department of Public Health & Human Services**  
**Lois Adams, Attorney, Department of Corrections**  
**Richard Meeker, Chief Juvenile Probation Officer,**  
**First Judicial District, Helena, and member of the**  
**Study Commission**

Candace Wimmer, Montana Board of Crime Control and  
Youth Justice Council  
REPRESENTATIVE BRAD MOLNAR, District 22, Laurel

*{Tape: 1; Side: B; Approx. Time Count: #20; Comments: None.}*

Opening Statement by Sponsor: SENATOR MIKE SPRAGUE, SD 6, Billings. SB 48 relates to SB 240 from the 1995 legislative session. The Report to the Governor and the 55th Legislature of the Juvenile Justice and Mental Health Study Commission includes meetings held at the five mental health regions in Montana (EXHIBIT #2). Youth are laughing at the system now, as there are no consequences. SB 48 is an inclusive bill dealing with "youth in need of intervention". Fourteen of seventeen were voting members of the Study Commission.

*{Tape: 2; Side: A; Approx. Time Count: #3.6; Comments: Non.}e*

Proponents' Testimony: SENATOR MIKE HALLIGAN. It's time to front-load youth treatment with early intervention, prevention, thus recognizing youth at risk. SB 48 addresses assessment centers, assessment officers, and looks at the family, not just the child. Communities will decide what treatment alternatives they want, and there may be funding associated with this.

SB 48 provides a set of graduated sanctions now. There is the possibility of a shelter-care alternative (community-based) for up to ten days. Assessors will get immunization, education, and other pertinent records within five days, subject to state and federal law. There will be a pilot program, with a single point of entry in two communities. There will be two different informal proceedings only one time each, then they will go on to a formal delinquency process. There is a financial responsibility to parents.

*{Tape: 2; Side: A; Approx. Time Count: #10.3; Comments: None.}*

Lance Melton, Director, Governmental Relations, Montana School Boards Association. I am offering a minor amendment to page 7, line 25, Section 5, subsection (z) (EXHIBIT #3) pertaining to the authority of a school district to protect and keep confidential certain information.

*{Tape: 2; Side: A; Approx. Time Count: #14; Comments: None.}*

Beth Baker, Department of Justice, provided written comments on the proposed legislation (EXHIBIT #4) and amendments (EXHIBIT #5).

The Department supports the Study Commission's work. The amendments are minor and have been discussed with the sponsor. The first amendment relates to disposition in youth cases, to provide consistency with current sex offender statute (in the process of change now). Amendments two through four deal with

Section 55 on page 56, specifically subsection (d) on line 23. It makes sure victims get noticed in the same manner required for offenses committed by adults.

Senate Bill 48 is comprehensive and complex. "A house bill is nearly identical with some major changes". The Department is concerned with Section 17, page 19, which eliminates the transfer process for listed offenses. We do agree the transfer process needs revision, but we see the need to retain the role of the judge in this process, for some sort of standard of review.

*{Tape: 2; Side: A; Approx. Time Count: #20; Comments: None.}*

**Pete Surdock, Child Protective Services, Department of Public Health and Human Services (DHHS) -MRM Program.** The Department also has concerns with the confidentiality provision. On page 13, lines 16-20, the public mental health program is managed care, and thus does not offer alternatives for assessment. On page 14, lines 9-29, the bill defines "mentally ill". We would suggest the definition used in other legislation being proposed to avoid confusion.

The Department also has concerns the language concerning truancy is too limiting.

**Lois Adams, Attorney, Department of Correction.** We want to thank the Commission for its work on the bill. Departmental legislation paralleling this legislation quite a bit, will come before the Committee on Friday, January 17, 1997.

*{Tape: 2; Side: B; Approx. Time Count: #00; Comments: None.}*

**Richard Meeker, Chief Juvenile Probation Officer, First Judicial District Helena,** also a member of the Study Commission. SB 48 sets forth many new, innovative programs and will cost money.

**Candace Wimmer, Montana Board of Crime Control and Youth Justice Council, and a non-voting member of the Study Commission.** The Board supports the bill, recognizes the technical problems in need of correction, and is available to help in this area, as needed. The Board also sees a problem with the truancy limit of one day, as well as the need to clarify who makes decisions on space available and who pays for it.

**REPRESENTATIVE BRAD MOLNAR.** The Montana juvenile justice rate is up ten percent in Montana, while it dropped twenty percent nationally; so something is not right in Montana. I'm asking that youths being assessed have the right to read their assessment and to make written comments.

On page 29 of the bill, I wanted second misdemeanor to go to a judge, rather than second felony. I would also like to see parents paying for all costs, based upon the income stated in their tax returns. A judge pro-tem is also known as a special

master. I don't believe we have the right to tell a judge who to hire for evaluations.

**{Tape: 2; Side: B; Approx. Time Count: #14; Comments: None.}**

I wondered why we were not holding a youth responsible for not getting to treatment appointments. Also, we were informed that social workers in one city refuse to work with "liberal" social workers in another city. Aftercare placement is the same place that the youths were sent prior to treatment, and is not a good aftercare environment.

**{Tape: 2; Side: B; Approx. Time Count: #17.1; Comments: None.}**

**Howard Give, Flathead County Commissioner.** I am responsible for the detention center there, and am a Montana Association of Counties (MACO) representative. I have concerns with overcrowding, and that the counties don't have the money to fund this bill.

**Questions From Committee Members and Responses: SENATOR DOHERTY.** I would like to see language for a tighter confidentiality provision, and for the definition of "mentally ill" in the other bill. **Pete Surdock.** I would need to get with the Office of Public Instruction and Susan Fox on the confidentiality issue. DHHS has a bill sponsored by Representative Soft defining mental illness and circumstances denoting need for treatment.

**{Tape: 2; Side: B; Approx. Time Count: #21.6; Comments: None.}**

**SENATOR DOHERTY.** I would like to hear on managed care and those who are 200% of poverty level. In such cases, who would pay? **Susan Fox.** If the youth were committed to the Department of Corrections, the Department would pay; if the were committed to Youth Court, the Court would pay. **SENATOR SPRAGUE.** The funds follow the child.

**Closing by Sponsor: SENATOR MIKE SPRAGUE.** No one on the Study Commission had all the answers, and no one will get all they want. We are trying to spread emphasis up-front to salvage youth, as we have found that 80 percent are salvageable. This, instead of too little, too late. This bill was a collaborative effort toward a solution.

I believe the Departments had good intentions, but the Commission was always "pulled to reality" by the testimony of individuals. This is an on-going process.

**CHAIRMAN CRIPPEN.** We will assign a subcommittee to look at these related bills. I thank the Commission and staff for their work on this bill.

The Committee will hold executive session on bills heard the first part of next week.

Exhibit # 2 SB48

Brochure

The full exhibit is available from:  
MT Historical Society Archives  
225 North Roberts  
P.O. Box 201201  
Helena, MT 59620-1201  
Phone # (406)444-4774

EXHIBIT NO. 2

DATE 1-10-97

FILE NO. SB48

# **"It Takes a Family, School, Community..."**

*A Report to the Governor  
and the  
55th Legislature  
of the Juvenile Justice  
and Mental Health Study Commission*

December 1996

Prepared by  
Montana Legislative Services Division  
State Capitol, Room 138  
Helena, Montana 59620

**Legislative  
Services  
Division**

(406) 444-3064  
FAX: (406) 444-3036

Proposed Amendments to Senate Bill 48  
Montana School Boards Association

Page 7, Line 25

Following: a principal of a school  
Strike: or a school employee who is working with  
Insert: or other employee of the school district authorized by the trustees of the district to  
receive such information with respect to  
Following: a student  
Insert: of the district  
Following: who is a  
Strike: common

What Section 41-3-205(z), MCA, would look like with the proposed amendment above:

(z) a principal of a school or a school employee who is working with or other employee  
of the school district authorized by the trustees of the district to receive such information with  
respect to a student of the district who is a common client of the department.

1-10-97  
SB 48  
Ex 3  
SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 1-10-97  
FILE NO. SB 48

DEPARTMENT OF CORRECTIONS



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PO BOX 201301  
HELENA, MONTANA 59620-1301

DOC COMMENTS ON JJMH PROPOSED LEGISLATION

SB0048

1. **DOC has different definition of delinquent youth.** DOC definition includes only "felony juvenile offender" and "chronic misdemeanor juvenile offender". By adhering to these definitions, it prevents bootstrapping of status offenders into secure correctional facilities.

The JJMH bill defines "delinquent youth" as serious juvenile offender, youth who violates a consent decree with petition, who violates a valid court order or who violates a condition of probation. Since a youth can receive probation, or a court order when involved in only status offenses, and violation can mean designation as a "delinquent" with the attendant possibility of being placed in secure correctional facility, this opens the door to about 400 <sup>probation violators + unknown amount of</sup> status offenders being eligible for placement at Pine Hills, or a secure girls facility. DOC is opposed to "bootstrapping" status offenders into the deep end of the correctional system. (Page 12, Line 26 of JJMH bill)

2. **DOC has an intermediate category of offender which is "chronic misdemeanor juvenile offender".** A chronic misdemeanor offender is a youth who has committed at least three offenses that would have been misdemeanor criminal offenses if committed by an adult; **and** the court finds the youth has engaged in a pattern of criminal behavior that requires the protection of the community.

The JJMH bill has only categories: youth in need of intervention and delinquent youth. In the DOC legislation, "youth in need of intervention" includes youth in the system which are not youth in need of care, but have not committed the three misdemeanors and do not have the pattern of behavior to be "chronic misdemeanor youth". Again, this keeps the youth who are not engaging in patterns of **criminal** behavior out of the secure correctional facilities. The department does not believe that juveniles who are runaways, truants, minors in possession, and minors who have used tobacco are appropriately placed in a secure correctional facility alongside youth who have committed murder, assault, rape, burglary, theft, etc. The former are better served by swift, certain consequences in the community.

3. **DOC has a different definition for "habitual truancy".** The JJMH bill defines truant as youth in grades 1 through 8 who miss 7 days a semester, and youth in grades 9 through 12 who

I:\public\yca-diff.doc

miss 7 class periods in a week. DOC bill defines truant as any student with 7 days **unexcused** absences in a semester. (Page 13, Line 29 of JJMH bill)

4. **DOC has deleted the definition of serious juvenile offender.** This is not a necessary term with the revisions. (Page 15, Line 16 and page 56, line 26 of JJMH bill)

5. **DOC is requesting that detention and secure detention also be available for youth who violate a juvenile parole agreement.**

(Page 15, Line 16 and page 16, line 18 of JJMH bill)

6. **DOC wishes to change the term "aftercare" to "juvenile parole".** The department believes this is a more accurate term for this process.

7. **DOC has an alternative definition for victim.** DOC is using the reference to the definition of victim in the criminal code. The JJMH definition does not address the possibility that minors may be victims. (page 16, line 3 of JJMH bill)

8. **DOC has clarified the definition of youth.** DOC wants to make it clear that persons under the age of 18 who have been transferred to district court for criminal prosecution are not defined as "youth".

9. **DOC has added one category to the definition of "youth in need of intervention".** DOC has added the category of youth who have committed offenses that would be misdemeanors if committed by an adult, but has not been determined to be a "chronic misdemeanor" by the court. (page 16, line 24 of JJMH bill)

10. **DOC does not agree that county attorney should be able to transfer youth without transfer hearing.** The JJMH bill provides that the county attorney has the discretion to file criminal charges directly in criminal court, without a transfer hearing in youth court to determine if the youth is appropriate for criminal prosecution.

The department received numerous calls from county attorneys around the state who wanted to prosecute as criminals in district court youths who had committed homicides, etc. Their question was always--"If this youth is convicted as an adult, can you give them a juvenile placement in ..... so they can receive treatment) The answer is no. If the youth is amenable to treatment, s/he should be treated as a juvenile. There is no budget in adult corrections to pay for treatment of criminally adjudicated youth, beyond that afforded any other adult offender.

The transfer hearing requires the county attorney to show that the youth acted with violence, aggression or premeditation. S/he must address the sophistication and maturity of the youth, his/her previous history, adjudications, and commitments, and that the youth requires treatment beyond that provided in the juvenile system. Without some type of transfer hearing mechanism,



the department will end up with more youths who are not appropriate to the adult correctional system, because of the tremendous political pressure on these elected officials to "get tough" on youthful offenders. (page 19, line 2 of JJMH bill)

**11. DOC wants to make transfer automatic for youths who commit transferrable offenses after their 17th birthday.** DOC does not want any person over the age of 18 in its youth facilities. If a youth commits an offense at age 17, goes through the court system, and then receives some type of sentence, s/he most likely will be over age 18 and still in a youth placement. DOC prefers to have anyone over the age of 18 in the adult system. (Page 21, Line 16 JJMH bill)

**12. DOC bill does not include the changes to the post-adjudicatory transfer statute.**

**13. DOC wants to be able to fingerprint all delinquent youth.** The JJMH bill states that only a youth who commits a felony may be fingerprinted. Because of the difference in the department's definition of delinquent, we would broaden this to include both definitions of delinquent--chronic misdemeanor and felony juvenile delinquent. (Page 26, line 6 JJMH bill)

**14. DOC does not perform evaluations at its youth correctional facilities for youth not committed to the facility.** The JJMH bill states that the youth court may defer imposition and order placement for evaluation of a youth in its court. This has been used historically as a type of "scared straight" program. First, Pine Hills does not perform these types of evaluations, and second, this takes beds and staff time at Pine Hills away from youth who need to be in a secure correctional facility. (Page 38, line 7 JJMH bill)

**15. Is DOC the proper entity to establish a youth placement committee?** There is no change in 41-5-525, but it is generally under the direction of the juvenile probation officer that a youth placement committee is convened. A change here may be appropriate. (page 46, line 19 JJMH bill)

**16. DOC does not want any youth over the age of 18 in the juvenile system.** 52-5-101, 52-5-107 and 52-5-127 state that the department is set up for youth age 10 to age 19. The department would like to change that to age 18. (page 58, line 10 JJMH bill)

**17. DOC bill changes the juvenile parole hearing process to allow interactive video hearings, and allows the hearings officer to be an employee of the department.** This is more similar to the adult system.

**18. DOC bill changes the purpose of the department as it applies to youth from "care, protection and mental and physical development" to custody, supervision and training.** (52-5-101 & 52-5-102) This is in keeping with the reorg which put of youth in need of care under

DPHHS and youth in need of intervention and delinquent youth in the custody of the DOC.

**19. DOC wants to restore the language taken out by 1995 legislature that says a youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. (page 36, line 25 JJMH bill)**

7  
EX-5  
1-10-97  
SB 48

Amendments to Senate Bill 48  
Introduced Bill (White)

Prepared by Beth Baker  
Department of Justice  
January 4, 1997

1. Page 41, line 17.  
Strike: "violation of 45-5-502 through 45-5-504, or 45-5-507"  
Insert: "sexual offense or violent offense as defined in 46-23-502"
2. Page 56, line 7.  
Strike: "youth court"  
Insert: "appropriate agency"
3. Page 56, line 21.  
Following: "shall"  
Strike: remainder of line 21 and all of line 22.  
Insert: "provide the victim with the name and address of the agency or agencies responsible for operation of youth detention, correctional, or shelter care facilities."
4. Page 56, lines 23 and 24.  
Following: "(d)"  
Strike: lines 23 and 24 in their entirety.  
Insert: "The appropriate official or agency shall provide the notification required by this subsection (3) in the same manner as required for offenses committed by adults."

1-10-97

DATE \_\_\_\_\_

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CS-09

DATE 1-10-97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 48, SB 99

< ■ > PLEASE PRINT < ■ >

Check One

| Name        | Representing | Bill No. | Support | Oppose |
|-------------|--------------|----------|---------|--------|
| MARY ELLERD | PROBATION    | 48       | ✓       |        |
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### VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

## **MINUTES**

### **MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **SENATOR BRUCE D. CRIPPEN**, on January 29, 1997, at 9:00 a.m., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

#### **ROLL CALL**

**Members Present:**

Sen. Bruce D. Crippen, Chairman (R)  
Sen. Lorents Grosfield, Vice Chairman (R)  
Sen. Al Bishop (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Sharon Estrada (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter L. McNutt (R)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Valencia Lane, Legislative Services Division  
Jody Bird, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 43, posted January 23 1997  
SB 201, SB 202, posted  
January 22, 1997  
Executive Action: SB 48, SB 99, SB 79, SB 176

#### **EXECUTIVE ACTION ON SB 48**

**Amendments:** Prior executive session.

**Motion:** SENATOR MIKE HALLIGAN MADE A MOTION THAT 48 DO PASS AS AMENDED.

**Discussion:** SENATOR HALLIGAN. The assumptions have been dropped to zero.

**SENATOR RIC HOLDEN.** We need to look at how this program will be funded. It's possible that the Fiscal Note could total \$1 million.

**SENATOR HALLIGAN.** The counties can set up a new center or use existing facilities/officers. We in the Study Commission just tried to ensure that we're not increasing the funding, but rather re-pool existing resources. We not talking about new dollars here, and so we are able to zero this thing out (EXHIBITS #1, #2, #3).

**Vote:** SENATOR HALLIGAN'S MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATOR HOLDEN WHO VOTED NO.

*{Tape: 1; Side A; Approx. Time Count: #7.0; Comments: 9:14 a.m..}*

EXECUTIVE ACTION ON SB 99

Amendments: SENATORS BARTLETT AND HALLIGAN.

Motion: SENATOR HALLIGAN MADE A MOTION TO ADOPT AMENDMENTS sb009903.av1.

Discussion: SENATOR HALLIGAN. Judge John Larson believes the Fiscal Note is zeroed out here, as well, and so it takes adult sentencing out to achieve this cost reduction. The extended jurisdiction allows the Court jurisdiction of juveniles to age 25, so they don't get out of recompensing the victim when they turn 18.

**SENATOR HOLDEN.** What does this Fiscal Note say? **SENATOR HALLIGAN.** This Fiscal Note will be null and void, and we will request a revision before the bill goes to the Senate floor for discussion.

**Vote:** SENATOR HALLIGAN'S MOTION TO ADOPT THE AMENDMENTS CARRIED UNANIMOUSLY.

Motion: SENATOR SUE BARTLETT MADE A MOTION TO ADOPT AMENDMENTS sb009902.av1.

Discussion: SENATOR BARTLETT. This strikes and repeals 41-5-208, MCA altogether, pertaining to transfer of supervisory authority to adult district court, on page 5 of the bill. Judge Diane Barz' opinion related to Section 208, posing a double jeopardy problem, i.e., the possibility of two sentences for the same crime. The Interim Study Commission looked at this section and tried to amend it as well.

**SENATOR HALLIGAN.** I wish I knew if SENATOR BARTLETT were correct. I do think there is a double jeopardy issue here, but am opposed to changing it now. I want to see the Fiscal Note, and read Judge Barz' decision, then talk to a few more judges in other states where this is already in operation.



SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 1  
DATE 1-29-97  
FILE NO. SB48

SB899  
EL#1

ROLAND J. FARICY

PRESIDING JUDGE  
JUVENILE DIVISION  
SECOND JUDICIAL DISTRICT

January 22, 1997

The Honorable John W. Larson  
District Judge  
Fourth Judicial District  
200 West Broadway  
Missoula, MT 59802-4292

Re: Extended Jurisdiction Juveniles

Dear Judge Larson:

After our discussion last week, I asked our Director of Juvenile Corrections to give me a memo regarding our legislation which became effective two years ago.

Before a judge designates a child to be an Extended Jurisdiction Juvenile status there is normally a psychological evaluation and a certification study available to help the judge decide if the interests of public safety are served by retaining that child in the juvenile system. Strong focus is placed on the seriousness of the offense and on the child's criminal history in weighing the risk. Even so, you can see from the correction's report that we often retain children charged with crimes against persons. While it is too early to give a final seal of approval to this law, the early results are favorable. And we have had some excellent results in several cases.

Very truly yours,

*Rol*  
Roland J. Faricy

RJF:jag

Juvenile Service Center  
480 St. Peter Street  
Saint Paul, Minnesota 55102

612-292-6104



## Ramsey County Juvenile Probation &amp; Parole

## MEMO

To: Judge Faricy  
Ramsey County Juvenile Court

January 15, 1997

From: Jim Hayes  
Juvenile Division Director  
Ramsey County Community Corrections

Re: Extended Jurisdiction Juveniles (E.J.J.)

As you know, I have been closely tracking our activities relative to this new jurisdictional category created by our Legislature effective 1-1-95. Part of my interest is because this is one of the most significant changes in Minnesota's Juvenile Code in the 35+ years that I have worked in this field. A second factor stems from my involvement in the creation of this legislation as an active member of the Supreme Court Task Force on Juvenile Justice throughout 1992-94.

That Task Force created this legislation, in my view, with two purposes in mind. (1) to strengthen the response of the Juvenile System to serious, violent juvenile offenders and (2) to prevent the "wholesale" certification of juvenile offenders into the Adult Court System. As you know, we also created legislation at that same time that made it easier to certify older, serious, violent juvenile offenders into the Adult Court System. These two simultaneous efforts are mutually supportive and compliment each other, in my view.

For those juveniles classified as E.J.J. by the Juvenile Court, I believe that this new jurisdictional category does two very desirable things:

(a) attempts to "gain their attention" through the stayed adult sentence, while giving them a last opportunity at juvenile treatment.

(b) enables the Court to quickly impose the adult sentence to serve public safety and enforce accountability if these juveniles fail to positively respond to this opportunity or re-offend before their 21st birthday.

In my view, if 50% of these youth successfully complete their E.J.J. disposition and probation to their 21st birthday without revocation, this new law will be a great success. We will not know this until we have had 5-10 years experience using this new statute. However, the following statistics will provide you with a general idea of our experience during the first two years.

EXTENDED JURISDICTION JUVENILES

|                        | <u>1996</u> | <u>1995</u> |
|------------------------|-------------|-------------|
| <u>Gender:</u>         |             |             |
| male = 42 = 98%        | 22          | 92%         |
| female = 1 = 2%        | 2           | 8%          |
|                        | <u>43</u>   | <u>24</u>   |
| <u>Age:</u>            |             |             |
| 16+ = 33 = 77%         | 20          | 83%         |
| 14/15 = 10 = 23%       | 4           | 17%         |
|                        | <u>43</u>   | <u>24</u>   |
| <u>Race:</u>           |             |             |
| Caucasion - 19 - 28%   |             |             |
| African Am. - 24 - 36% |             |             |
| Asian - 15 - 22%       |             |             |
| Hispanic - 6 - 9%      |             |             |
| Native Am. - 3 - 5%    |             |             |
| <u>Offense:</u>        |             |             |
| Person = 41 = 95%      | 22          | 92%         |
| Drug = 0 = 0%          | 2           | 8%          |
| Property = 2 = 5%      | 0           | 0           |
|                        | <u>43</u>   | <u>24</u>   |

|                                |             |             |
|--------------------------------|-------------|-------------|
| <u>Stayed Adult Sentences:</u> | <u>1996</u> | <u>1995</u> |
| Under 3 years                  | 12 28%      | 8 33%       |
| 3 Years +                      | 31 72%      | 16 66%      |
| Maximum                        | 108 mo.     | 98 mo.      |

|                               |             |             |
|-------------------------------|-------------|-------------|
| <u>Juvenile Dispositions:</u> | <u>1996</u> | <u>1995</u> |
| Clarinda Academy              | 15          | 8           |
| Glen Mills                    | 7           | 3           |
| MCF-Red Wing                  | 1           | 0           |
| MCF-Sauke Centre              | 1           | 2           |
| Mille Lacs Academy            | 3           | 0           |
| Woodland Hills                | 4           | 0           |
| Forest Ridge Academy          | 1           | 1           |
| Colorado Boys' Ranch          | 1           | 0           |
| P.A.T.H. foster home          | 1           | 0           |
| Chamberlain Academy           | 0           | 2           |
| Springfield Academy           | 0           | 1           |
| Boys Totem Town               | 0           | 1           |
| Gilfillan                     | 0           | 1           |
| Bar None Ranch                | 0           | 1           |
| Change of Venue-Wash. Co      | 2           | 1           |
| Change of Venue-Henn. Co      | 2           | 1           |
| Change of Venue-Anoka Co      | 1           | 0           |
| Change of Venue-Dakota Co     | 0           | 1           |
| Interstate-Michigan           | 0           | 1           |
| Prob/O-P Tx.                  | 2           | 0           |
| Prob/ISP/O-P Tx.              | 2           | 0           |
|                               | <u>43</u>   | <u>24</u>   |

Violations: Adult Sentences upon Revocation of E.J.J. Probation

| <u>#</u> | <u>Year Adj. E.J.J.</u> | <u>Adult Sentence Imposed</u>                    |
|----------|-------------------------|--------------------------------------------------|
| <u>1</u> | (1995)                  | 21 mo. prison                                    |
| 1        | (1995)                  | 5 mo. Wkhse + 5 yrs. Prob.                       |
| 1        | (1995)                  | 49 mo. prison sentence.                          |
| 1        | (1995)                  | 90 days Wkhse + C/D eval. +<br>Adult Prob. to 21 |
| 1        | (1995)                  | 36 mo. prison sentence.                          |
| <u>1</u> | (1995)                  | 72 mo. prison sentence.                          |
| <u>6</u> |                         |                                                  |

Summary: The majority of our E.J.J. juveniles are still in their initial dispositional placement at this point in time. We do have about a dozen who have successfully completed their initial placement and are in the community under probation supervision. Only time will tell us if this was good legislation. However, our initial impression is very positive and we believe that it will help a significant number of our serious, violent juvenile offenders to choose to use help and change.

DANIEL H. MABLEY  
CHIEF JUDGE



SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 1-29-97

MINN. STAT. SB 98

1704 GOVERNMENT CENTER  
300 SOUTH SIXTH STREET  
MINNEAPOLIS, MINNESOTA 55487

(612) 348-3561  
FAX (612) 348-2131

STATE OF MINNESOTA  
FOURTH JUDICIAL DISTRICT  
HENNEPIN COUNTY DISTRICT COURT

January 16, 1997

The Honorable John W. Larson  
Judge of District Court  
200 West Broadway  
Missola, Montana 59802

RE: EXTENDED JURISDICTION-JUVENILE CASES

*John*  
Dear Judge Larson:

Thanks for taking the time to discuss the issue of extended jurisdiction juveniles with me the other day. I think it is valuable for us to compare how different jurisdictions handle similar problems.

I just wanted to take this opportunity to reiterate in writing one of the issues that we discussed relating to probation violations. We have found here in Hennepin County that many judges faced with a juvenile in violation of the terms of their juvenile probation have decided not to execute the adult sentence. Rather, most often the judge simply modifies the juvenile probation and allows the defendant to continue in the juvenile system. This has caused some concern by some of our administrative staff because our computer system doesn't recognize this option. Nevertheless, it is an option being used currently at a fairly regular rate.

If you have any additional questions or suggestions concerning extended jurisdiction juveniles, please do not hesitate to contact me. As always, it is a pleasure to talk to you.

Best regards,

A handwritten signature in cursive script, appearing to read "Dan".

Daniel H. Mabley

DHM:dk

**9. DOC bill changes the purpose of the department as it applies to youth from "care, protection and mental and physical development" to "care, custody, supervision and training." (52-5-101 & 52-5-102)** This is in keeping with the reorg which put of youth in need of care under DPHHS and youth in need of intervention and delinquent youth in the custody of the DOC.

## MONTANA SIXTEENTH JUDICIAL DISTRICT COURT

Rosebud County Courthouse  
P.O. Box 1260  
Forsyth, Montana 59327  
Telephone (406) 356-7310  
Fax (406) 356-7551

ADJUDICATORY COMMITTEE #3  
EDICT NO. 3  
DATE 1-29-97  
FILE NO. SB 48

Joe L. Hegel  
District Judge

Charlene A. Berdahl  
Court Reporter

January 22, 1997

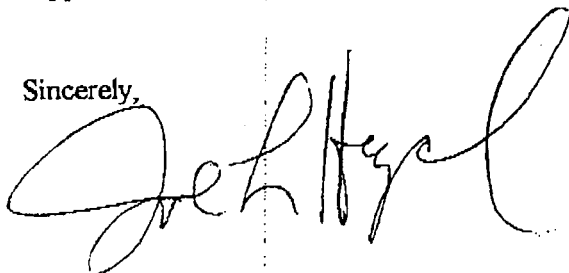
Honorable John W. Larson  
Missoula County Courthouse, Dept #3  
200 West Broadway  
Missoula, MT 59802

RE: Youth Court Jurisdiction

Dear Judge Larson:

This is to indicate my support of the continuation of extended jurisdiction and supervision provided by Montana Code Annotated § 41-5-208. We have used this provision several times since it was enacted and are in the process of using it in a series of burglaries by youths who were 17+ years old at the time of the offenses. These cases involve several thousand dollars of damages and without § 40-4-208, the Court would have little leverage to collect the restitution as well as enforce community service and other conditions. Although the Court may retain jurisdiction over the youth until they turn 21, without the ability to transfer jurisdiction to district court, there is really no bottom line enforcement once the youth attain the age of 18 years because Pine Hills School will not keep youth past their 18th birthday and because other community-based sanctions will already have been tried. The transfer of jurisdiction provision is effective in keeping youth from avoiding the court-ordered consequences of their actions merely by passage of time. I support all constitutional efforts at retaining this dispositional option

Sincerely,



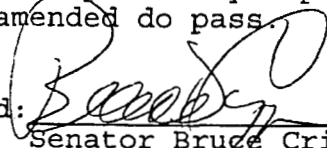
JOE L. HEGEL  
Youth Court Judge &  
District Judge

SENATE STANDING COMMITTEE REPORT

Page 1 of 7  
January 29, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 48 (first reading copy -- white), respectfully report that SB 48 be amended as follows and as so amended do pass.

Signed:   
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, page 1, line 12.

Strike: "REDEFINING "DELINQUENT YOUTH";"

2. Title, page 1, line 14.

Strike: "WORKING"

3. Title, page 1, lines 18 and 19.

Following: line 17

Strike: line 18 in its entirety through "PROSECUTION;" on line 19

4. Page 7, line 25.

Following: "a principal of a school or"

Strike: "a school"

Insert: "other"

Following: "employee"

Strike: "who is working with"

Insert: "of the school district authorized by the trustees of the district to receive the information with respect to"

Following: "student"

Insert: "of the district"

Strike: "common"

5. Page 12, line 28.

Following: "as a"

Insert: "youth"

6. Page 12, lines 29 through page 13, line 1.

Strike: subsections (a) through (c) in their entirety

7. Page 13, line 2.

Strike: "(d) youth"

Insert: "(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or  
(b) "

 Amd. Coord.  
 Sec. of Senate

211510SC.STS

8. Page 13, lines 17 and 18.

Following: "mental health evaluation" on line 17

Strike: remainder of line 17 through "program" on line 18

9. Page 13, line 18.

Strike: "and"

Insert: "or"

10. Page 13, line 29.

Following: "of"

Strike: ";

11. Page 13, line 30.

Strike: "(a) 7"

Insert: "10"

Following: "more"

Insert: "of unexcused absences"

Following: "semester"

Strike: remainder of line 30 through "; or"

Insert: ".

12. Page 14, line 1.

Strike: subsection (b) in its entirety

13. Page 14, lines 18 through 28.

Strike: subsection (22) in its entirety

Renumber: subsequent subsections

14. Page 15, line 24.

Strike: "working"

15. Page 16, line 17.

Following: "judge"

Strike: "and"

Insert: ";

Following: "officers"

Insert: " , and assessment officers"

16. Page 21, line 17 through page 22, line 20.

Strike: line 17 on page 21 through page 22, line 20

Insert: "**41-5-208. Transfer to district court after  
prosecution -- disposition in district court -- limitation  
on jurisdiction. (1) To ensure continued compliance with the  
court's disposition under 41-5-523 or [section 33], at any  
time after a youth reaches 18 years of age but before the  
youth reaches 21 years of age, the youth court judge may  
transfer jurisdiction to district court and order the  
transfer of supervisory responsibility and the youth's case**"



files to the department.

(2) If a youth whose case has been transferred to district court under this section violates a disposition imposed under 41-5-523, the district court may impose conditions as provided under 46-18-201 through 46-18-203.

(3) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 18 years of age:

(a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

(b) be supervised by the department.

(4) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age.""

17. Page 27, line 25.

Following: "i"

Insert: "or"

18. Page 27, line 26.

Strike: subsection (b) in its entirety

Renumber: subsequent subsection

19. Page 28, line 2.

Following: "placement"

Insert: ", youth detention facility, "

20. Page 29, line 18.

Following: "youth"

Strike: the remainder of line 18 through "youth" on line 19

21. Page 29, line 21.

Following: "basis"

Insert: "at the county's expense, which is not reimbursable under part 10 of this chapter"

22. Page 29, lines 24 and 27.

Strike: "order"

Insert: "agreement"

23. Page 29, line 25.

Following: "disposition."

Insert: "attorney fees for the costs of prosecuting or defending the youth, costs of detention,"

24. Page 29, line 26.

Strike: "court-appointed"

25. Page 29, line 29.

Following: "disposed"

Insert: ";

(m) any other condition ordered by the court to accomplish the goals of the informal adjustment, including but not limited to family assessment. Before ordering family assessment, the court shall provide the family an estimate of the cost of family assessment, and the court shall take into consideration the financial resources of the family before ordering parental or guardian contribution for the costs of family assessment"

26. Page 33, line 6.

Following: "disposition,"

Insert: "attorney fees for the costs of prosecuting or defending the youth, costs of detention,"

27. Page 33, line 11.

Insert: "(4) A parent has a right to review the results of a youth assessment placement and to place a rebuttal, statement, or additional information in the youth's file in youth court."

28. Page 38, line 1.

Following: "disposition,"

Insert: "attorney fees for the costs of prosecuting or defending the youth, costs of detention,"

29. Page 38, line 2.

Strike: "court-appointed"

30. Page 38.

Following: line 9

Insert: "(b) The placement for evaluation must be on a space-available basis at the county's expense, which is not reimbursable under part 10 of this chapter."

Renumber: subsequent subsection

31. Page 38, line 12.

Following: "contribution."

Insert: "Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation."

32. Page 41, line 15.

Following: "committee."

Insert: "The court may not place a youth adjudicated delinquent in a state youth correctional facility for an offense that would be a misdemeanor if committed by an adult, unless the court finds that the youth presents a danger to public safety and that the placement is recommended by a mental health professional after evaluation of the youth."

33. Page 41, line 17.

Strike: "violation of 45-5-502 through 45-5-504, or 45-5-507"

Insert: "sexual offense or violent offense, as defined in 46-23-502,"

34. Page 41, line 21.

Following: "offender"

Strike: the remainder of line 21 through "probation" on line 22

35. Page 42, lines 18 and 19.

Following: "ill" on line 18

Strike: remainder of line 18 through "41-5-103," on line 19

36. Page 44, line 8.

Following: "disposition,"

Insert: "attorney fees for the costs of prosecuting or defending the youth, costs of detention,"

37. Page 45, line 26.

Following: "basis"

Insert: "at the county's expense, which is not reimbursable under part 10 of this chapter"

38. Page 56, line 7.

Strike: "youth court"

Insert: "appropriate agency"

39. Page 56, lines 21 and 22.

Following: "shall" on line 21

Strike: remainder of line 21 through "(3)" on line 22

Insert: "provide the victim with the name and address of the agency or agencies responsible for operation of youth detention, correctional, or shelter care facilities"

40. Page 56, line 23.

Following: "The"

Strike: "court"

Insert: "appropriate official or agency"

Following: "provide"

Strike: "to the department of justice the list of people entitled to"

Insert: "the"

41. Page 56, line 24.

Strike: "under"

Insert: "required by"

Following: "(3)"

Strike: remainder of line 24 through "notification"

Insert: "in the same manner as required for offenses committed by adults"

42. Page 60, line 13.

Insert: "NEW SECTION. Section 60. Designation of assessment officers -- qualifications -- salary -- duties. (1) The youth court judge of each judicial district may appoint and supervise the necessary assessment officers as are required to carry out the purpose and intent of this chapter. The qualifications for assessment officers must be established by the appointing judge. Assessment officers are county employees, and assessment officers' salaries must be fixed by the judge. An assessment officer may work out of the local police department or other local law enforcement office.

(2) An assessment officer shall perform the duties set out in 41-5-301 and 41-5-401."

Renumber: subsequent sections

43. Page 60, line 29.

Insert: "(3) [Section 60] is intended to be codified as an integral part of Title 41, chapter 5, part 7, and the provisions of Title 41, chapter 5, part 7, apply to [section 60].

NEW SECTION. Section 65. Coordination instruction. If Bill No. \_\_ [LC 1131] is passed and approved and if it deletes the definition of "seriously mentally ill" and substitutes "mental disorder", then [section 35 of this act] must read as follows:

NEW SECTION. Section 35. Disposition -- finding of suffering from mental disorder and meeting other criteria -- rights -- limitation on placement. (1) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and

who meets the criteria in 53-21-126(1) is entitled to all rights provided by 53-21-114 through 53-21-119.

(2) A youth who, prior to placement or sentencing, is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) may not be committed or sentenced to a state youth correctional facility.

(3) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127."

Renumber: subsequent sections

44. Page 61, line 3.

Insert: "NEW SECTION. **Section 67. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent section

-END-

**MONTANA SENATE  
1997 LEGISLATURE  
JUDICIARY COMMITTEE**

ROLL CALL

DATE \_\_\_\_\_

Jan 29, 1995

[illegible]

SEN:1995  
wp.rollcall.man  
CS-09

Opponents' Testimony:

GORDON MORRIS, Montana Association of Counties  
{Tape: 1; Side: A; Approx. Time Count: 7.2.}

EXHIBIT 1

GLORIA PALADICHEK, Richland Development, Richland County  
{Tape: 1; Side: A; Approx. Time Count: 8.9.}

ALEC HANSEN, Montana League of Cities and Towns  
{Tape: 1; Side: A; Approx. Time Count: 10.2.}

Informational Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 13.1.}

Closing by Sponsor: REP. LINDA McCULLOCH

{Tape: 1; Side: A; Approx. Time Count: 13.2; Comments: Rep. McCulloch requested the bill be tabled.}

MOTION/VOTE: REP. MCGEE MOVED HB 167 BE TABLED. Motion passed 7-2, with REP. JOHNSON voting NO and REP. WYATT not voting.

=====

MIKE WINGARD, Legislative Audit Division

EXHIBIT 2

{Tape: 1; Side: A; Approx. Time Count: 14.4; Comments: Mr. Wingard provided the Committee with copies of an updated Juvenile Justice System flow chart.}

=====

HEARING ON SB 48

Opening Statement by Sponsor: SEN. MIKE SPRAGUE, SD 6

{Tape: 1; Side: A; Approx. Time Count: 15.4; Comments: Sen. Sprague introduced the bill.}

Proponents' Testimony:

SEN. MIKE HALLIGAN, SD 34

{Tape: 1; Side: A; Approx. Time Count: 18.5.}

CANDY WIMMER, Montana Board of Crime Control

{Tape: 1; Side: A; Approx. Time Count: 25.0.}

MARY ELLERD, Juvenile Probation

{Tape: 1; Side: A; Approx. Time Count: 26.6.}

BETH BAKER, Department of Justice  
{Tape: 1; Side: A; Approx. Time Count: 27.8.}

EXHIBIT 3

LOIS ADAMS, Department of Corrections  
{Tape: 1; Side: A; Approx. Time Count: 30.1; Comments: Exhibits 4 & 5 are changes the Department of Corrections proposes for this bill.}

EXHIBITS 4 & 5

TONI JENSEN, MAHSC  
{Tape: 1; Side: A; Approx. Time Count: 41.9.}

MARY ALICE COOK, Advocate for Children and Families  
{Tape: 1; Side: A; Approx. Time Count: 43.1.}

JOHN LARSON, District Court Judge, Missoula  
{Tape: 1; Side: B; Approx. Time Count: 0.}

Opponents' Testimony:

JANICE HENDERSON, Youth Justice Task Force  
{Tape: 1; Side: B; Approx. Time Count: 3.1.}

EXHIBIT 6

LESLIE HALKO, Bozeman resident  
{Tape: 1; Side: B; Approx. Time Count: 6.7.}

EXHIBIT 7

VICKY CAIN, New Mexico  
{Tape: 1; Side: B; Approx. Time Count: 13.5; Comments: Ms. Cain's testimony was read to the Committee by Ms. Halko.}

EXHIBIT 8

KATHY COLLINS, Helena resident  
{Tape: 1; Side: B; Approx. Time Count: 19.5.}

EXHIBIT 9

SUSAN LILES, Missoula resident  
{Tape: 1; Side: B; Approx. Time Count: 24.6.}

EXHIBIT 10

RINNAN ZOENER, Missoula resident  
{Tape: 1; Side: B; Approx. Time Count: 27.6.}

EXHIBIT 11

RUTH BRAY, Missoula resident  
{Tape: 1; Side: B; Approx. Time Count: 30.2.}

EXHIBIT 12

REP. BRAD MOLNAR, HD 22  
{Tape: 1; Side: B; Approx. Time Count: 34.5; Comments: Rep. Molnar's testimony continued on Tape 2, Side A.}

Informational Testimony: None

Questions From Committee Members and Responses:  
{Tape: 2; Side: A; Approx. Time Count: 6.7.}

Closing by Sponsor: SEN. MIKE SPRAGUE  
{Tape: 2; Side: A; Approx. Time Count: 12.5.}



**CHAIRMAN ERNEST BERGSAGEL**

{Tape: 2; Side: A; Approx. Time Count: 15.0; Comments: Chairman Bergsagel appointed Representatives McGee, Wyatt and R. Johnson to a subcommittee which will deal with this bill and related Juvenile Justice System issues. Representative Royal Johnson will chair the subcommittee.}

**REP. R. JOHNSON**

{Tape: 2; Side: A; Approx. Time Count: 16.0; Comments: Information re: the subcommittee.}

**REP. DAN MCGEE**

{Tape: 2; Side: A; Approx. Time Count: 17.4; Comments: Information re: the subcommittee.}

BREAK

**WOMEN'S CORRECTIONAL CENTER PRESENTATION**

**JO ACTON, Warden, Women's Correctional Center**

**EXHIBIT 13**

{Tape: 2; Side: A; Approx. Time Count: 18.4.}

**QUESTIONS FROM THE COMMITTEE AND RESPONSES:**

{Tape: 2; Side: A; Approx. Time Count: 40.8; Comments: Questions and responses continued on Tape 2, Side B.}

EXHIBIT 3  
DATE 2/18/97  
SB 48

Amendments to Senate Bill 48  
Second Reading Copy (Yellow)

Prepared by Beth Baker  
Department of Justice  
February 18, 1997

1. Page 20, line 30.

Following: line 29

Insert: "(2) The district court shall grant leave to file the information if the court finds that there is probable cause to believe the youth has committed the alleged offense and that considering the seriousness of the offense and in the interests of community protection the case should be filed in district court."

Renumber: remaining subsections

DEPARTMENT OF CORRECTIONS



MARCRACICOT, GOVERNOR

STATE OF MONTANA

(406) 444-3930  
FAX: (406) 444-4920

EXHIBIT 4  
DATE 2/18/97  
SB 48  
1539 11TH AVENUE

PO BOX 201301  
HELENA, MONTANA 59620-1301

PROPOSED AMENDMENTS TO SB0048.02 - DEPARTMENT OF CORRECTIONS

February 17, 1997

1. Title, line 15, following: "MATTERS"

Insert: "MAKING A FELONY OF ASSAULT ON A PERSON WHO HAS THE CARE OR CUSTODY OF A JUVENILE OFFENDER"

2. Title, Line 17, Following: "DISTRICT COURT"

Insert: "LIMITING TO THOSE UNDER AGE 18 YOUTHS WHO MAY BE PLACED IN A STATE JUVENILE CORRECTIONAL FACILITY; REQUIRING A COUNTY ATTORNEY TO FILE A TRANSFERRABLE OFFENSE IN DISTRICT COURT IF THE YOUTH WAS AGE 17 AT THE TIME OF COMMITTING THE ACT"

3. Title, page 2, line 16

Following "41-5-1105"

Insert "45-5-202"

4. Title, page 2, line 7

Following: "53-1-201"

Strike: "AND"

Following 53-1-203

Insert: "AND 53-5-107, 53-5-111, 53-5-113, 53-5-126, 53-5-127, 53-5-128, 53-5-129"

5. Page 15, line 18

Following: "contempt of court"

Strike: "or"

Insert: ","

Following: "court order"

Insert: "or violation of a juvenile parole agreement"

6. Page 16, line 28

Following: "contempt of court"

Strike: "or"

Insert: ",",

Following: "court order"

Insert: "or violation of a juvenile parole agreement"

7. Page 17, line 3

Following: "beverages"

Strike: "tobacco products, or gambling"

8. Page 17, line 5

Following: "behavior"

Strike: ", including running away from home or habitual truancy"

9. Page 20, line 30

Following "(2)"

Insert: "The county attorney must file with the district court a petition for leave to file in district court if the youth was age 17 at the time the youth committed the unlawful act."

Renumber subsequent sections

10. Page 26, line 30

Following: "filed"

Strike: remainder of line 30

Page 27, line 11

Strike: line 1 in its entirety

11. Page 30

Following line 30

Insert: "(n) confiscation of youth's driver's license, if the youth has one, by the juvenile probation officer for a specified period of time not to exceed 30 days. Upon seizure, the probation officer shall notify the department of justice of the reason for and time period of the seizure. The department of justice may not divulge information relating to the seizure to any person or entity outside the law enforcement community and shall expunge the seizure from its records when the seizure period terminates."

12. Page 31, line 10

Following: "violates"

Strike: "an aftercare agreement"

Insert: "a juvenile parole"

13. Page 35, line 22

Following: "environment,"

Insert: "any statement by the victim,"

14. Page 39

Following: line 23

Insert: (16) confiscation of youth's driver's license, if the youth has one, by the juvenile probation officer for a specified period of time not to exceed 30 days. Upon seizure, the probation officer shall notify the department of justice of the reason for and time period of the seizure. The department of justice may not divulge information relating to the seizure to any person or entity outside the law enforcement community and shall expunge the seizure from its records when the seizure period terminates.

15. Page 43, line 14

Strike: "successful"

16. Page 43, line 15

Strike: "completion of"

17. page 43, line 15

Following: "treatment"

Strike: remainder of line 15 in its entirety

18. Page 43, line 25

Following: "enter into"

Strike: "an aftercare"

Insert: "a juvenile parole"

19. Page 44, line 11

Following: "signs"

Strike: "an aftercare"

Insert: "a juvenile parole"

20. Page 53, line 17

Following: "Section 52."

Section 45-5-202 is amended to read:

**45-5-202. (Effective July 1, 1997) Aggravated assault -- felony assault.** (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if the person purposely or knowingly causes:

(a) bodily injury to another with a weapon;

(b) reasonable apprehension of serious bodily injury in another by use of a weapon; or  
(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a ~~prisoner adult or juvenile offender~~.

(3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222. A person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than \$50,000, or both.

21. Page 59, line 28

Following: "properly"

Strike: "diagnose, care for, train, educate, and rehabilitate"

Insert: "exercise care, custody, supervision and training of"

22. Page 59, line 29

Strike: "19"

Insert: "18"

23. Page 60, line 5

Following: "Section 58."

Section 53-5-107 is amended to read:

**53-5-107. Maximum age of commitment.** A ~~child~~ youth who has attained the age of 18 years may not be committed by any youth court to the department of corrections, ~~except, however, that any person under 19 years who prior to attaining the age of 18 years came under the jurisdiction of the youth court by reason of delinquent conduct and whose adjudication of delinquency is not made until after child reaches the age of 18 years may be committed to the department of corrections.~~

24. Section 52-5-111 is amended to read:

**52-5-111. Commutation of sentence to state prison and transfer of prisoner to youth correctional facility.** (1) Upon the application of a person ~~under 19 years of age who has not attained the age of 18 years~~ who has been sentenced to ~~the~~ a state prison facility, or upon the application of the ~~youth's~~ person's parents or guardian, the governor may, after consulting with the department of corrections and with the approval of the board of pardons and parole, commute the sentence by committing the person who may benefit from programs offered at a youth correctional facility to the department of corrections until the ~~youth person is 19~~ person attains the age of 18 years of age or until sooner placed or discharged.

(2) If the person's behavior after being committed to the department of corrections indicates that the ~~youth~~ person is not a proper person to reside at one of the youth correctional facilities, the governor, after consulting with the department of corrections and with the approval of the board of pardons and parole, may revoke the commutation and return the ~~youth person~~ person to

the a state prison facility to serve out the ~~youth's~~ person's unexpired term, and the time spent by the ~~youth~~ person at one of the youth correctional facilities or while a refugee from one of the youth correctional facilities is not considered as a part of the ~~youth's~~ person's original sentence.

(3) Upon recommendation of the warden and with the approval of the department of corrections, a person under ~~19~~ 18 years of age who has been sentenced to the state prison and who may benefit from programs offered at a youth correctional facility may be transferred to any youth correctional facility under the jurisdiction and control of the department of corrections.

(4) If the person's behavior after transfer to a youth correctional facility indicates that the ~~youth~~ person might be released on parole or that the ~~youth's~~ person's sentence might be commuted and the ~~youth~~ be discharged from custody, the superintendent of the facility, with the approval of the department of corrections, may make an appropriate recommendation to the board of pardons and parole and the governor, who may in their discretion parole the person or commute the ~~youth's~~ person's sentence.

(5) If the person's behavior after transfer to a youth correctional facility indicates that the ~~youth~~ person is not a proper person to reside in the facility, upon recommendation of the superintendent and with the approval of the department of corrections, the ~~youth~~ person must be returned to the state prison to serve out the unexpired term.

25. Section 52-5-113 is amended to read:

**52-5-113. Apprehension and return of youth leaving youth correctional facility without permission.** A youth who has left a any youth correctional facility or program operated or contracted by, of the department of corrections without permission may be apprehended and returned by any citizen. ~~The term "youth correctional facility of the department" means any facility under the supervision and control of the department of corrections that has as its primary function the care, training, custody, and control of youth and specifically includes Pine Hills school for boys and the Mountain View school for girls. The department may publish the youth's name, picture, offense, and other information which may facilitate the youth's return or protect the public.~~

26. Section 52-5-126 is amended to read.

**52-5-126. Youth aftercare Juvenile parole agreement.** (1) A youth released by the department of corrections from one of the state youth correctional facilities to the supervision, custody, and control of the department shall, before the youth's release, sign ~~an aftercare~~ a juvenile parole agreement containing:

(a) a statement of the terms and conditions of the release, including a list of the acts that, if committed by the youth, may result in a return to the facility; and

(b) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in 52-5-129 before being returned to the facility.

(2) A youth released from a state youth correctional facility for commitment to a mental health facility pursuant to Title 53, chapter 21, part 1, shall sign ~~an aftercare~~ a juvenile parole agreement that will remain in effect until the department no longer has custody of the youth.

27. Section 52-5-127 is amended to read:

**52-5-127. Control over youth released under aftercare agreement.** The department of corrections has control over a youth released pursuant to a juvenile parole agreement under 52-5-126 until the youth attains the age of ~~19~~ 18 years unless the youth is discharged by the department before age ~~19~~ 18. However, the youth is subject to the continuing jurisdiction of the youth courts of Montana, pursuant to 41-5-205, for acts committed by the youth while under the control of the department.

28. Section 52-5-128 is amended to read:

**52-5-128. Detention of youth who violates aftercare juvenile parole agreement.** A youth who violates the terms and conditions of the youth's ~~aftercare parole~~ agreement ~~or who escape from any youth correctional facility or program~~ may be detained by the department of corrections, or by a law officer of the state, county, or city of the state upon ~~certificates~~ notice in writing to the officer by the department to the effect that the youth has violated the terms and conditions of the youth's ~~aftercare parole~~ agreement ~~or has escaped from any youth correctional facility or program~~.

29. Section 52-5-129, MCA, is amended to read:

**52-5-129. Hearing on alleged violation of aftercare juvenile parole agreement -- right to appeal outcome.** (1) When it is alleged by an ~~aftercare counselor~~ juvenile parole officer that a youth has violated the terms of the youth's ~~aftercare parole~~ agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier, at the discretion of the hearings officer, this hearing may be held by means of interactive video transmission. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that the youth should be returned to the youth correctional facility from which the youth was released or a different plan for ~~treatment~~ custody and supervision of the youth should be pursued by the department of corrections.

(2) The youth, upon advice of an attorney, may waive the right to a hearing.

(3) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of the ~~aftercare~~ parole agreement, including notice of the purpose of the hearing;



(b) disclosure of the evidence against the youth and the facts constituting the alleged violation;

(c) opportunity to be heard in person or by interactive video transmission and to present witnesses and documentary evidence to controvert the evidence against the youth and to show that there are compelling reasons that justify or mitigate the violation;

(d) opportunity to have the referee subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses in person or by means of interactive video transmission;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the referee hearings officer.

(4) The department shall ~~appoint a referee~~ provide a hearings officer, ~~who may not be an employee of the department~~, to conduct the hearing. ~~In the conduct of the hearing, the department may request the county attorney's assistance as necessary.~~ The department shall adopt rules necessary to effect a prompt and full review.

(5) If the referee hearings officer finds, by a preponderance of the evidence, that the youth did in fact commit the violation, the referee hearings officer shall make a recommendation to the department for the placement of the youth. In making this recommendation, the referee hearings officer may consider mitigating or aggravating circumstances. ~~Final approval rests with the department and must be made within 10 days of the referee's recommendation. The youth or the youth's attorney may appeal the hearings officer's decision to the department director. Such appeal must be made in writing within 5 days of the hearing. The department director or designee must grant or deny the appeal within 5 days of receipt of the appeal.~~

(6) The youth may appeal from the decision ~~at the hearing of the department director~~ to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the ~~department's~~ department director's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when the youth's detention or care is required to protect the person or property of the youth or of others or the youth may abscond or be removed from the community. The department shall determine the place and manner of detention and is responsible for the cost of the detention. Procedures for taking into custody and detention of a youth charged with violation of the youth's ~~aftercare~~ parole agreement are as provided in 41-5-303, 41-5-306, 41-5-311, and 41-5-314.

(8) If the decision is made to return the youth to the youth correctional facility from which the youth was released and the youth appeals that decision, the youth shall await the outcome of the appeal at the facility.

Renumber subsequent sections

30. Page 60, line 10

Strike: "protection, and mental and physical development"

Insert: "care, custody, supervision and training"

31. Page 16, line

Following "Victim"

Strike the remainder of line 8 and lines 9 through 12 in their entirety

Insert: "has the meaning given in 46-18-243"

32. Page 16, line 14

Following "emancipation."

Insert The term does not include a person under 18 years of age who has been transferred to district court pursuant to 41-5-206.

These are the changes the DOC amendments would make to SB0048.02

**1. DOC has clarified the definition of youth.**

DOC wants to make it clear that persons under the age of 18 who have been transferred to district court for criminal prosecution are not defined as "youth". There has been confusion when the court wants to transfer the youth so an adult criminal sentence will be imposed, and then wants the transferred youth to receive treatment in juvenile programs and facilities. There are many problems with this, not limited to the inability of the department to place these "adjudicated criminals" with juveniles in juvenile facilities and programs.

**2. DOC does not want any youth over the age of 18 in the juvenile corrections system.**

52-5-101, 52-5-107 and 52-5-127 state that the department is set up for youth age 10 to age 19. The department would like to change that to age 18.

**3. DOC wants to make transfer automatic for youths who commit transferrable offenses after their 17th birthday.**

DOC does not want any person over the age of 18 in its youth facilities. If a youth commits an offense at age 17, goes through the court system, and then receives some type of sentence, s/he most likely will be over age 18 and still in a youth placement. DOC prefers to have anyone over the age of 18 in the adult system.

**4. DOC is requesting that detention and secure detention also be available for youth who violate a juvenile parole agreement.**

**5. DOC wishes to change the term "aftercare" to "juvenile parole".** The department believes this is a more accurate term for this process.

**6. DOC wants to be able to fingerprint all delinquent youth.** The JJMH bill states that only a youth who commits a felony may be fingerprinted. Because of the difference in the department's definition of delinquent, we would broaden this to include both definitions of delinquent--chronic misdemeanor and felony juvenile delinquent.

**7. DOC amendments change the juvenile parole hearing process to allow interactive video hearings, and allow the hearings officer to be an employee of the department.** This is more similar to the adult system.

**8. DOC amendments make it a felony to assault a person who has the care or custody of a juvenile offender.** Present law only includes adult offenders.

Mr. Chairman and Members of the Committee:

My name is Janice Henderson. I was a member of the Governor's Task Force on the Juvenile Justice and Mental Health. I represented the parents of the State of Montana.

I oppose SB48 because it is a bad bill. I realize that we worked hard on the Task Force for a long time. This bill does not solve the problems that ~~was~~ <sup>I heard</sup> presented at these meetings. ~~Most~~ <sup>Many</sup> of the people who were on the Task Force would receive monetary gain from this bill ~~without~~ <sup>but, would it help</sup> our youth?

Many of our youth have ended up in the juvenile system, because ~~Youth Court~~ <sup>Parents</sup> sought help from Youth Court. In the process the problems have only become worse because the youth have had no clearly defined boundaries or consequences for their behavior. Consequently, the youth became more entrenched in the system, and become chronic offenders. This bill would force the parents and the siblings into a larger system with the same philosophy that doesn't work. Not only would the youth end up abused by the system, but the other siblings and parents as well. ~~The~~ This bill expects the parents and taxpayers to fund this without ~~the~~ even the privilege of using their own health care providers. Furthermore, if parents don't agree with the ~~the~~ assessment

centers diagnosis or recommendations, then they are held in contempt of court. What gives an assessment officer the right to determine what is best for ~~the~~ our children? The parental rights are eroded yet must be responsible for monetary costs, according to this bill. Remember rights and responsibility must go together. In other states the Juvenile Justice System works closely with parents to set out clearly defined consequences that are enforced by both the system & the parents. When a child or parent has their first contact with ~~the~~<sup>this</sup> system parents are assumed to be abusers or neglectful. I am concerned that we would have more chronic offenders that would end up in Montana State Prison.

This bill puts assessment centers as a consequence for behavior. It was continually stated by parents that the youth need swift consequences such as restitution, detention or fines.

Haven't we already seen that assessing and counseling doesn't work? That was to be the purpose of the Task Force to find an alternative that would reduce crime. Why create a huge beauracray at the parents and taxpayer's expense that doesn't work? This is only more of the same. It will cost the taxpayers an exorbitant amount of money to create

and fund these centers and services — with the parents at the mercy of the DPHHS. ~~Also~~ This is a department that is held accountable to no one.

This bill keeps it possible to have multiple misdemeanors with no consequence ~~but~~ other than an assessment center. It also allows for consent decrees. It stipulates that a youthful offender could receive one consent decree for a felony, and never have to see a judge. They should not receive any consent decrees, but be placed in front of a judge for all criminal offenses with minimum + maximum sentences.

I worked on the Task Force for over a year and I am sad that this bill is the result of our time + energy. I believe it will only further the increase of crime, destroy families and create a huge bureaucracy at the expense of parents + taxpayers.

Please vote no for SB48 and vote in legislation that would deter crime and strengthen families. I encourage you to examine Shock as an alternate to this bill. It has statistically reduced crime from ~~to~~ 50-68%.

Thank you for hearing my testimony.

Leslie Halko  
100 Ice Blue Rd.  
Bozeman  
MT 59718  
406-587-0377  
2-18-97

Testimony against  
SB48

EXHIBIT 7  
DATE 2/18/97  
SB 48

YCA = Youth Court Act

I am the parent of 4 boys. My 18 & 20 year olds were involved in the Youth Court system for about 7 years.

I urge you to look carefully at the specifics of this bill. As you do, please keep in mind the following comments my boys have made to me:

① "Mom, you're the only one who has a problem with what I do."

② After a 3-day jail stay in the "drunk tank" because it was the only space separate from adult prisoners: "I don't ever want to go back there again." This stay in jail was the first time in over 3 months that my son had seen me or spoken to me - he was a runaway, on probation. It was the first time in 3 months I knew where he was, how he was, if he was even alive, & I was able to sleep all night without fearing for his life. After returning from a 50 day stay in jail, he said, "You can't let me go."

③ When I asked my 18 year old why he'd decided to abide by the law, he said "I don't want to have to pay that money again to the court & to get my car out of the pound."

④ My almost 21-year-old now has an insured

car & for the first time, a legal drivers license. I asked him what convinced him to do it. He told me "The judge could put me away for a long time, take my license forever & charge me \$1000.00 or more!"

⑤ I asked him what he thought about the assessment centers & the whole family being evaluated for mental health, abuse & neglect, education & chemical dependency because he had stolen a car. He laughed & told me that was "absurd". "Shaun (his 7 year old brother) & you have nothing to do with my stealing a car!"

Now my comments on specifics in the bill.

1. Sec. 25 41-5-403; Sec. 19 41-5-301; Sec. 32 41-5-523; Sec. 41 41-5-524.

MIP & tobacco laws have specific sentencing guidelines, minimum/maximum sentences including fines the youth must pay. All sentences for youth crimes must be defined this way. MIP & tobacco laws state the person convicted "shall" be fined. In all other sections of the YCA the law states "the court may"... The word "may" needs to be replaced with "must". Such wording & guidelines:

- A. provide for consistency from county to county, judge to judge.
- B. simplify & clarify the court process for judges & Youth Court officers
- C. define the rules in advance for youth & parents. During numerous meetings over the last 3 years youth have requested such definition.



D. provide immediate, clear consequences for criminal behavior directed at the person who committed the crime — the youth.

Fines, restitution & immediate, short term, local detention need to be included in sentences.

## 2. Sec. 25 41-5-403

In order to effectively change behavior, informal hearings & consent decrees must be eliminated, not expanded. SB48 only expands their use. Such hearings give youth the impression, rightly so, that crimes don't count until you're 18. In this bill a youth can commit an infinite number of misdemeanors & never be prosecuted or appear before a judge, just as in current law. This is not a "revision". Each offense, <sup>included in misdemeanors</sup> must be prosecuted. Probation officers would then be freed from conducting hearings & instead could insure sentences are completed & probation terms are followed.

## 3. Creation & mandated use of state managed, <sup>Sec. 12 41-5-103</sup> staffed & funded assessment centers must be struck completely from the bill. They are too costly; greatly increase an already out-of-control bureaucracy; eliminate parental or youth choice of counselors; and duplicate services already available in the private sector. This is directly contrary to all of the governor's & legislature's claims to be downsizing government & lowering the cost to taxpayers.

This bill permits mandated assessment of youth & families prior to issuing a citation, a hearing or conviction.

Are these constitutional?

## 4. Sec. 25 41-5-403

As my son's & other's stories have proven, short term local detention centers are needed as a sentencing option. No matter what a youth's reasons may be for his criminal activity, he must learn that it is socially unacceptable behavior. Placement in an assessment center only helps him justify his behavior by focusing on the why rather than on the behavior itself. Mandating family assessment sends the message that the family has a problem, not the youth. Eliminate assessment centers as a detention option.

## 5. Sec. 32 41-5-523

Increasing the power of the court to require that parents pay fines, court costs, placement & treatment costs, victim counseling, etc. for a youth until age 18 is totally unacceptable in a legal system that permits a child to run away at any age, to drop out of school without parental consent after 8th grade, to obtain a drivers license without parental consent, to waive his constitutional rights & obtain legal council at 16 without parental consent, to sign paternity papers at any age without parental consent, & to file abuse charges willy nilly against his parents for disciplining him. Parents rights & responsibilities have been eliminated by state legislation & state agencies, yet in this bill the state

requires parents to pay all costs associated with damages done by their unofficially, state emancipated youth. Fines, damages & costs need to be paid by the youth.

6. Sec. 45 41-5-603

Schools & interdisciplinary teams should not have access to all court files, including medical, psychological, DPHHS files. Education should not be denied based on such information. Every social service agency in town does not need access to all such files. The information is already available to schools & agencies through court order & a signed parental release.

7. Sec. 11 41-3-1132

I agree that truancy should be reinstated as a crime with legal consequences for youth. However, the only consequence I can find in this bill is referral to an assessment center. The definition must be changed to "recorded unexcused absences".

A 1st through 8th grade student could easily be ill 7 days in a semester. I question how truancy will be used. If parents take their child to an out-of-state funeral or on a family trip, will they all be referred to an assessment center?

8. Sec. 17 41-5-206

This bill seems to give the County Attorney nearly unlimited authority to transfer youth cases into adult court. Youth are not adults. This should not be necessary if jurisdiction laws are changed &

specific sentencing guidelines are enacted.

Read this bill carefully

Please, vote no on SB48.

Please give consideration to HB477, with the addition of specific sentencing guidelines, as a more effective alternative.

Russell Hales

Mr Leslie Halko

EXHIBIT

DATE

2/18/97

SB

48

As a mother of 28 years and after having raised some 10 children, I can honestly say that never has there been a time when child-rearing was so difficult. As times have changed and life is alot more challanging for all of us, so it is for our youth as well. Still, I believe that there are some things that just don't change in life and especially concerning the raising of our children. Frankly the problems that we face with our youth today, are very much the same as they were years ago, but it is we, the adults that have changed the way in which we precieve and treat the youth of today. They still need the same unconditional love and they still need the same firm boundaries followed by just consequences when necessary. It seems almost too simple, yet why are we failing to see it as such today.

When my 4th son first got into trouble with the law in 1993, his Dad and I were naturally shocked as we had nurtured and taught our son in the ways of doing what was right in life, still, we were not discouraged as we knew what kind of a boy our son was, as we had faith in a system that would be fair and just and take him through the obvious steps to experiencing true sorrow for what he had done and restore balance within his life once again. Little did we know about the nightmare that we were about to encounter, when my son enter the Gallatin Co. Juvenile Probation system. When my son was first placed on probation he was scared about the future and sorry about what he had done, yet it did not take long for him to realize that not only was this system not interested in whether he was scared or sorry or not, but that they also even blamed the very people that he had loved and trusted his whole entire life, for the crimes that he had committed. It did not take much longer and our son went from a scared first time offender to a full-blown out juvenile deliquent. In the 4 short months that he continues to break the law, he ran away from home, stoled 5 cars, broke every probation ruling he was given, and lived of and on with an adult drug dealer, who ran a teenage theft ring in our town. During this time, he was not made to pay fines or restitution, do community service, do detention time, and by the way we had a local youth detention facility, or made accountable to even one offense by means of the courts. During this time as his parents we pleaded, begged, cried, and yelled with local police, courts and probation as well, to please, please stop our son, who was so obviously running, out of control. During this time, our son himself, suffered the agony and pain of being and doing things that he himself felt incapable of stopping as well. My son committed his first offense in Feb. of 1993 and on the 6th of June of that same year his life tragically came to an end as he was driving in the 5th stolen car that he was involved in taking. Looking back, it is not hard to ask the question, what would have been so wrong with a strict probation time, backed up and enforced with detention time if necessary to discourage, instead of encourage more deliquent behavior for the future. My son did not deserve to die simply because the local probation officers were unwilling to use a system already in-place at the time.

In 1994, my husband and myself moved our familt not only from Gallatin co, but from the state of Montana as well. We left a brand new house, 2 thriving business, our whole family and a lifetime of friends, as we were not willing to loose our next son to a system that plainly didn't care. As he was already struggling as a youth trying to to deal with the death of his brother , we knew in our hearts that he would need the extra help and support that he would not receive if we stayed. One of the criterias that I used in picking our new home was how their juvenile justice system was maintained. I asked a probation officer on the phone one day, How many cars a youth would have to steal befor he might receive

*For Leslie Balke*

some consequences or be put into the detention center". He thought I was joking of course, but when he realized I was serious, he said, "How Many, Try, just one."

Our son, Daniel, now 17 did need the support and guidance of a juvenile probation system that cared. After moving here it was not long until he was placed on probation, at which time he was watch, advised, picked up when truant, drug tested, warned, praised, and encouraged, and yes, he did spend time in the local youth detention facility. All this allowed him to develop a healthy respect and fear for the probation system and the law, something he did not have before he came here. Detention time gave him a time-out period when he was out of control and a time to think about his actions and the changes he needed to make. And all of this was done in a timely fashion, usually right from the probation officers office alone, and surprisingly to us, with the utmost respect towards us simply because we were his parents. My son Daniel is living proof that there is a system that works and believe it or not it is the same system that has already been in place in Montana for years, the only difference was the willingness of the probation dept. and the courts to use it or not. I don't understand why the State of Montana would want to replace it with another costly system that still does not even address the basic question, "What consequences do we provide for our children when they are in violation of the law."?

In closing , I would like to leave you with the words of my dear son, Caleb, written in 1993 about 1 month before his death. He wrote, "Why did I run away? I ran away because I was out of control. I wish I had my life back in control. I wish I was good. I wish I never would have screwed up. I hope I change my life. I am going to change my life.

Our Caleb was never really given the chance to change his life, as he fell through the many and yet so unnecessary cracks that exists within the juvenile justice system in Montana still today. It is my prayer that you will not vote for a bill that continues to allow these cracks to exist, as it is our children's very futures, and even their very lives that are at stake.

Thank you, Vicki Cain

Leslie, Try this one, I didn't have time to correct spelling errors. I hope this will work. God bless, I love you , Vicki

*Robert Johnson*  
*copy*

EXHIBIT 9  
DATE 2/18/97  
SB 48

SB 48

Mr. Chairman and members of the committee;

This is not a bill that the families of Montana want. As I refer to sections of this bill, ask yourselves if the parents of Montana would have written any of the following conditions.

1. Would the families of Montana have written section 12, in which they give up their fundamental rights to family privacy? This section allows an assessment team of outsiders to enter their homes and determine the parent's and sibling's strengths and needs as gathered through the following types of evaluations: chemical dependency, education assessment, mental health evaluations or other services as provided by the department of health and human services or state or local agencies? I don't think that parents would have asked for that. Would you want that for your own family? This is found specifically in section 12, definitions, 41-5-103 #13.
2. Would the families of Montana have written a bill protecting the identity of their accuser and then release to 27 different persons or entities private information about themselves that is contained in their "record"? (See section 5, confidentiality - disclosure exceptions 41-3-205-3 items a-z). I don't think so. Our legislation should protect the families, not anonymous accusers.
3. Would our families give the government the right to take a child for up to ten days while they are evaluated for mental health, chemical dependency, abuse and neglect? (See section 12, definition of youth assessment placement 41-5-103-36). Would parents add that they should be forced to pay all the costs of the assessments or be held in contempt of court? (See section 28, rights and obligations persons to be advised 41-5-515 #3). Would they give the department of corrections continuing jurisdiction over the youth until 21 years of age? (See section 9, continuing jurisdiction of youth court, 41-3-1114).

Remember that all of the things I've mentioned so far are done without parental consent or permission. These things are forced on the families.

Section 12 (41-5-103-41c) says "a youth in need of intervention means a youth who has committed any of the acts of a delinquent youth but whom the youth court, in its discretion chooses, to regard the youth as a youth in need of intervention." This definition is so broad that the youth and family are at the mercy of the youth court. Once labeled a youth in need of intervention, the family assessments begin.

It is not logical that Montana's parents would have written a bill like this which protects the identity of an accuser, makes families pay the costs of whatever "treatments" are decided on by a team of total strangers and holds the entire family, parents and siblings included, accountable to meet the conditions set up by the youth court.

People who will ask you to pass this bill in its current form will assure the parents of Montana to "trust us, there won't be any abuses to families under this bill". But do you know what? It's impossible for me to believe that because their solutions would be paid for on the backs of the families. There are no budget constraints for the government to abide by so they can call for unlimited testing and counseling.

And do you know what else bothers me about this bill? The fact that when a youth by his/her own will violates the law or is determined to be a youth in need of intervention, the burden is put on the rest of the family who is somehow assumed to be at fault for the actions of the youth. Can you see how the rights of the parents and other children in the family are totally violated by this bill? One of the major problems in our society today is that no one is held accountable for THEIR OWN actions. Why then is the State of Montana looking to blame our families and assume that they are in need of treatment themselves?

If a family cannot pay the costs of the prescribed treatment then the taxpayers of Montana will be forced to pick up the tab.

If anyone says that I haven't got my facts straight, then you need to read for yourselves the sections I have identified and see for yourselves if this bill doesn't read this way. There are no guarantees for the parents of Montana that this isn't going to happen.

I recommend a do not pass on this bill. Thank you for your time and consideration.

Kathy Collins  
1393 Big Horn Road  
Helena, Montana 59602



18 Feb 1997

EXHIBIT

~~5~~ 10

DATE

2/18/97

SB

48

## House Select Committee on Corrections

SB 48

Mr. Chairman and members of the Committee

My name is Susan Liles, I live in Missoula Co. and have four children ranging from 22 yrs to 7yrs. My children have not been involved in the juvenile justice system, but I am here because of my concern for other families who have children in the the system and the threats to their right by the possible passage of this bill.

I believe in the punishment of those who break the laws of the land. I fully support restitution to the victim and having the offender suffer the consequences of their actions. Should a law be a bad one, let it be changed to be Constitutionally sound. I feel that SB 48 is bad law that should not be enacted. For example:

This law would take away the rights to privacy by disclosing family matters to the public, news media, federal agencies, military, and future employers. This law would make assessment records accessable to any citizen upon request, which could open the door to abuse of private information.

A youth may be placed in an assessment center if the child has 10 days of unexcused absences from school. I feel that this is an excessive punishment for ~~an~~ "skipping school."

A youth must be assessed within 24 hrs of their arrest, excluding the weekends.

Most arrests occur on a Friday or Saturday night. The offender would then be required to stay in the assessment center the entire weekend to wait for processing on Monday. This is not fair, since more serious adult crimes the offender is out on bail the next day.

The bill states that parents must pay if it is determined they have contributed to the delinquency of the youth. This point is too broad and can possibly be abused in interpretation. Will the parent pay assessment cost if they are deemed "a bad example" or influenced the youth through their "social drinking" or were the parents guilty ~~of~~ the crime do to "lack of supervision." Is the youth responsible for their own actions or do we now lay the blame on the entire family?

I feel this bill will expand <sup>the juvenile justice</sup> ~~government~~ system and <sup>other</sup> social agencies powers and cost the taxpayers too much with few positive results.

Thank for listening to my comments.

Susan Giles

EXHIBIT 11  
DATE 2/18/97  
SB 48

Mr. Chairman and members of the committee:

My name is Rinnan Zohner and I am from Missoula County. I oppose SB 48 for the following reasons.

Assessment centers do not seem like adequate consequences for inappropriate or criminal behavior. A youth would consider an assessment center as an escape from everyday responsibilities, such as school, homework, or parental rules. In a youth's mind this would result in a 10 day vacation.

The systems that we have now have not enabled youth to improve their unacceptable behavior. Rivendale, Pine Hills, and the Youth Court have not benefited the majority of youth at all. From a young persons point of view, I can only see that assessment centers and more of such services will only breed more unacceptable behavior. It is just another program. Swift and tough consequences would make youth stop and think before continuing their life of destructive behavior.

Most teenagers that I know would not learn anything from a program that makes the parents and not the youthful offenders responsible for the youth's behavior. In fact some rebellious teenagers would take advantage of this opportunity to hurt their parents and escape responsibility because they didn't get their own way.

Also, it doesn't make sense to put a 16 year old in Montana State Prison and yet keeping them as a youth until the age of 21. A serious juvenile offender should be kept in Pine Hills until the youth reaches 18 or 21 if they are unable to protect themselves from predators.

If we could find a way to lower the rate of youthful criminals that has had positive results, I would strongly recommend following it. I have heard there are other programs that do this.

I urge this committee and all legislators to pass legislation that would reduce crime and not place more youth in the system. We must have consequences of fines, restitution and detention in order to keep our youth from Montana State Prison.

I urge you to vote no for SB48. Thank you for hearing my testimony.

Mr Chairman members of the Committee

My name is Beth Bray Jim from Missoula County

Thank you for the opportunity of privilege of <sup>addressing</sup> you today. <sup>I have 4 children</sup> I have 4 children

EXHIBIT 18  
DATE 2/18/97  
SB 48

Range in age from 2 1/2 to 12 1/2. And although

None ~~have~~ been involved in the juvenile Justice System I feel its very important to address SB48 and the very serious threat it poses to the parents of MT and <sup>our</sup> ~~our~~ rights to make responsible decisions for our children

The problems which face our youth can not be easily addressed by this type of broad legislation. SB48

Created mainly by state service agency would produce an enormous bureaucracy <sup>at the culminated of the process</sup> which would cause huge <sup>problems in families</sup> financial burdens for parents and the tax payers of MT and actually provide very little help for the youth in need of intervention or the youth in need of care. Does it seem reasonable

that a child could be assessed for 10 days @ an assessment center for smoking a cigarette, drinking a beer, skipping school ~~or~~ being deemed uncontrollable, who decides what is uncontrollable is.

Should the parents & siblings then also have to submit to assessment & the trauma & expense of it. There is no doubt that defined rules & consequences are needed in cases of inappropriate or criminal behavior.

However this bill is too broad. The terms delinquent youth, probable cause, abuse

neglect, inappropriate behavior

in this bill <sup>must</sup> ~~shall~~ be very closely defined.

Nothing should be left to personal interpretation.

When discussing the treatment/protection of our parental rights, our youth our future.

We would all agree our children are our future.

Please note me on SB48.

and examine alternative legislation which places responsibility for bad behavior on the youth <sup>not the parents or siblings</sup> and <sup>who</sup> provides for ~~fixed~~ <sup>committed</sup> immediate consequences ~~to~~ crimes ~~committed~~.

Thank you for hearing my testimony

## HOUSE OF REPRESENTATIVES

House Select COMMITTEE ON CORRECTIONS

ROLL CALL

DATE 2/18/97

[illegible]

# MONTANA HOUSE OF REPRESENTATIVES SELECT COMMITTEE ON CORRECTIONS VISITOR REGISTER

DATE: February 18, 1997

BILL NUMBER: SB 48

SPONSOR: SPRAGUE

Please indicate your position below:

[REDACTED] [REDACTED]

INFORMATIONAL (I)

**PLEASE PRINT**

| PLEASE<br>CIRCLE | NAME            | ADDRESS  | REPRESENTING                    |
|------------------|-----------------|----------|---------------------------------|
| P O I            | Gordon Morris   |          | MACo                            |
| P O I            | Jim [unclear]   |          | MAHSL                           |
| P O I            | John Barbagello |          |                                 |
| P O I            | Kathy Wimmer    |          | MBC                             |
| P O I            | Kathy Collins   |          | Self                            |
| P O I            | Beth Baker      | Helena   | Dept of Justice                 |
| P O I            | Jan Henderson   | Missoula | Youth Justice Task Force        |
| P O I            | Leslie Halko    | Bozeman  | Self & Vicki Cain               |
| P O I            | Lois Adams      |          | DOJ                             |
| P O I            | Rinnan Zinner   | MSLA     | PARENTS                         |
| P O I            | Ruth Bray       | MSLA     | Parent                          |
| P O I            | Susan Kiles     | MSLA     | Parents                         |
| P O I            | Mary Alice Cook | Helena   | Adv. for<br>Children & Families |
| P O I            |                 |          |                                 |
| P O I            |                 |          |                                 |
| P O I            |                 |          |                                 |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

#### SELECT COMMITTEE ON CORRECTIONS

**Call to Order:** By CHAIRMAN BERGSAGEL, on March 10, 1997, at 6:10 p.m., in Room 325.

#### ROLL CALL

##### **Members Present:**

Rep. Ernest Bergsagel, Chairman (R)  
Rep. William T. "Red" Menahan, Vice Chairman (D)  
Sen. B.F. "Chris" Christiaens (D)  
Rep. Gary Feland (R)  
Sen. Delwyn Gage (R)  
Rep. Royal C. Johnson (R)  
Rep. Betty Lou Kasten (R)  
Rep. Matt McCann (D)  
Rep. Daniel W. McGee (R)  
Sen. Charles "Chuck" Swysgood (R)  
Rep. Steve Vick (R)  
Rep. Diana E. Wyatt (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Susan Fox, Legislative Services Division  
Meg Angell, Committee Secretary

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted:

Executive Action: SB 48; HB 477; HB 114; HB 113;  
HB 261; HB 327; HB 136;  
HB 544; HB 83

#### SB 48

**INTRODUCTION:** REP. ROYAL JOHNSON

{Tape: 1; Side: A; Approx. Time Count: 2.5.}

**EXPLANATION OF AMENDMENTS:** SUSAN FOX

**EXHIBITS 1-3**

{Tape: 1; Side: A; Approx. Time Count: 10.3.}

**COMMENTS/QUESTIONS FROM COMMITTEE MEMBERS AND RESPONSES:**

{Tape: 1; Side: A; Approx. Time Count: 23.9; Comments:

Clarification for Committee Members continued on Tape 1, Side B.}



MOTION: REP. R. JOHNSON MOVED SB 48 BE CONCURRED IN AS AMENDED  
{Tape: 1; Side: B; Approx. Time Count: 28.0.}

MOTION: REP. McGEE MOVED THE AMENDMENTS  
{Tape: 2; Side: A; Approx. Time Count: 0.}

EXPLANATION OF SUSPENSION OF DRIVER'S LICENSE EXHIBIT 4  
(SUSAN FOX)  
{Tape: 2; Side: A; Approx. Time Count: .3.}

MOTION/VOTE: REP. WYATT MOVED AMENDMENT #79 (EXHIBIT 2) BE  
SEGREGATED FROM THE REMAINDER OF THE AMENDMENTS. Motion carried  
unanimously.  
{Tape: 2; Side: A; Approx. Time Count: 4.5.}

MOTION/VOTE: REP. WYATT MOVED THE REMAINDER OF THE AMENDMENTS.  
Motion carried unanimously.  
{Tape: 2; Side: A; Approx. Time Count: 5.1.}

MOTION: REP. McGEE MOVED SB 48 BE CONCURRED IN AS AMENDED.  
{Tape: 2; Side: A; Approx. Time Count: 5.4.}

#### DISCUSSION

MOTION: SEN. GAGE MOVED A CONCEPTUAL AMENDMENT REGARDING  
TRANSFER OF FUNDS BETWEEN DEPARTMENTS, INCLUDE IN HB 2.  
{Tape: 2; Side: A; Approx. Time Count: 5.7.}

#### DISCUSSION

VOTE: Motion failed 6-6 with REP. MENAHAN, REP. KASTEN, REP.  
VICK, REP. WYATT, SEN. SWYSGOOD and CHAIRMAN BERGSAGEL voting no.  
{Tape: 2; Side: A; Approx. Time Count: 24.6.}

MOTION: REP. JOHNSON MOVED INCLUSION OF AMENDMENT #79.  
{Tape: 2; Side: A; Approx. Time Count: 28.9.}

#### DISCUSSION

VOTE: Motion failed 2-10 with REP. JOHNSON and REP. McGEE voting  
yes.  
{Tape: 2; Side: B; Approx. Time Count: 2.3.}

VOTE: (SB 48 AS AMENDED) Motion carried unanimously.  
{Tape: 2; Side: B; Approx. Time Count: 3.0.}

MOTION: REP. JOHNSON MOVED HB 138 BE TABLED. Motion carried  
unanimously.  
{Tape: 2; Side: B; Approx. Time Count: 4.3.}

HB 477

MOTION: REP. McGEE MOVED HB 477 DO PASS

{Tape: 2; Side: B; Approx. Time Count: 4.7.}

DISCUSSION

MOTION: REP. McGEE MOVED COORDINATION INSTRUCTIONS ON HB 477 TO CONFORM WITH SB 48.

{Tape: 2; Side: B; Approx. Time Count: 6.3.}

DISCUSSION

VOTE: Motion carried 8-4 with REP. WYATT, SEN. SWYSGOOD, REP. KASTEN and CHAIRMAN BERGSAGEL voting no.

{Tape: 2; Side: B; Approx. Time Count: 8.3.}

MOTION/VOTE: REP. McGEE MOVED HB 477 AS AMENDED. Motion failed 5-7 with REP. FELAND, REP. JOHNSON, REP. McGEE, REP. VICK and SEN. GAGE voting yes.

{Tape: 2; Side: B; Approx. Time Count: 8.9.}

MOTION/VOTE: SEN. SWYSGOOD MOVED HB 477 BE TABLED. Motion carried unanimously.

{Tape: 2; Side: B; Approx. Time Count: 9.7.}

HB 114

EXPLANATION: SUSAN FOX

MOTION: REP. JOHNSON MOVED HB 114 DO PASS.

{Tape: 2; Side: B; Approx. Time Count: 12.1.}

MOTION: REP. JOHNSON MOVED INCLUSION OF THE COORDINATION INSTRUCTIONS TO COMPLY WITH SB 48.

{Tape: 2; Side: B; Approx. Time Count: 12.2.}

DISCUSSION

VOTE: Motion carried 11-1 with SEN. SWYSGOOD voting no.

{Tape: 2; Side: B; Approx. Time Count: 12.8.}

FURTHER DISCUSSION OF HB 114 AS AMENDED

VOTE: Motion carried 9-3 with REP. WYATT, SEN. SWYSGOOD and SEN. GAGE voting no.

{Tape: 2; Side: B; Approx. Time Count: 14.8.}

HB 113

MOTION: REP. McCANN MOVED HB 113 DO PASS.

{Tape: 2; Side: B; Approx. Time Count: 15.4.}

EXPLANATION OF COORDINATION AMENDMENTS WITH SB 48.

Senate Bill 48 - third reading copy

Table of Contents

| <u>Section Number</u>                                                                                                                                            | <u>Page No.</u> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Section 1. Section 7-6-501, MCA, is amended to read:                                                                                                             |                 |
| <b>"7-6-501. Definitions. ....</b>                                                                                                                               | <b>2</b>        |
| Section 2. Section 20-5-321, MCA, is amended to read:                                                                                                            |                 |
| <b>"20-5-321. Attendance with mandatory approval -- tuition and transportation. ....</b>                                                                         | <b>2</b>        |
| Section 3. Section 20-7-422, MCA, is amended to read:                                                                                                            |                 |
| <b>"20-7-422. Out-of-state placement of children with disabilities -- payment of costs. ....</b>                                                                 | <b>4</b>        |
| Section 4. Section 23-5-158, MCA, is amended to read:                                                                                                            |                 |
| <b>"23-5-158. Minors not to participate -- penalty -- exception. ....</b>                                                                                        | <b>5</b>        |
| Section 5. Section 41-3-205, MCA, is amended to read:                                                                                                            |                 |
| <b>"41-3-205. Confidentiality -- disclosure exceptions. ....</b>                                                                                                 | <b>5</b>        |
| Section 6. Section 41-3-1101, MCA, is amended to read:                                                                                                           |                 |
| <b>"41-3-1101. Establishment of substitute care for youth. ....</b>                                                                                              | <b>8</b>        |
| Section 7. Section 41-3-1102, MCA, is amended to read:                                                                                                           |                 |
| <b>"41-3-1102. Definitions. ....</b>                                                                                                                             | <b>8</b>        |
| Section 8. Section 41-3-1103, MCA, is amended to read:                                                                                                           |                 |
| <b>"41-3-1103. Powers and duties of department. ....</b>                                                                                                         | <b>9</b>        |
| Section 9. Section 41-3-1114, MCA, is amended to read:                                                                                                           |                 |
| <b>"41-3-1114. Continuing jurisdiction of youth court. ....</b>                                                                                                  | <b>10</b>       |
| Section 10. Section 41-3-1122, MCA, is amended to read:                                                                                                          |                 |
| <b>"41-3-1122. Payment for support of youth in need of care, youth in need of supervision intervention, or delinquent youth -- reimbursement by county. ....</b> | <b>11</b>       |
| Section 11. Section 41-3-1132, MCA, is amended to read:                                                                                                          |                 |
| <b>"41-3-1132. Governmental contracts with nonprofit organizations. ....</b>                                                                                     | <b>12</b>       |
| Section 12. Section 41-5-103, MCA, is amended to read:                                                                                                           |                 |
| <b>"41-5-103. Definitions. ....</b>                                                                                                                              | <b>13</b>       |
| Section 13. Section 41-5-201, MCA, is amended to read:                                                                                                           |                 |
| <b>"41-5-201. Youth court judge -- judges pro tempore -- special masters. ....</b>                                                                               | <b>17</b>       |
| Section 14. Section 41-5-203, MCA, is amended to read:                                                                                                           |                 |

|                                                                                                                                                                                                                                                              |    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| "41-5-203. Jurisdiction of the court. ....                                                                                                                                                                                                                   | 17 |
| Section 15. Section 41-5-204, MCA, is amended to read:                                                                                                                                                                                                       |    |
| "41-5-204. Venue and transfer. ....                                                                                                                                                                                                                          | 18 |
| Section 16. Section 41-5-205, MCA, is amended to read:                                                                                                                                                                                                       |    |
| "41-5-205. Retention of jurisdiction -- termination. ....                                                                                                                                                                                                    | 18 |
| Section 17. Section 41-5-206, MCA, is amended to read:                                                                                                                                                                                                       |    |
| "41-5-206. <del>Transfer to criminal</del> <u>Filing in district court prior to prosecution formal</u><br><u>proceedings in youth court.</u> ....                                                                                                            | 19 |
| Section 18. Section 41-5-208, MCA, is amended to read:                                                                                                                                                                                                       |    |
| <del>"41-5-208. Transfer of supervisory responsibility to district court after prosecution</del><br><del>-- juvenile disposition in district court -- limitation on jurisdiction nonextended jurisdiction</del><br><del>and nontransferred cases.</del> .... | 22 |
| Section 19. Section 41-5-301, MCA, is amended to read:                                                                                                                                                                                                       |    |
| "41-5-301. Preliminary investigation and disposition. ....                                                                                                                                                                                                   | 23 |
| Section 20. Section 41-5-303, MCA, is amended to read:                                                                                                                                                                                                       |    |
| "41-5-303. Rights of youth taken into custody -- questioning -- hearing for<br>probable cause -- detention. ....                                                                                                                                             | 25 |
| Section 21. Section 41-5-304, MCA, is amended to read:                                                                                                                                                                                                       |    |
| "41-5-304. Investigation, fingerprints, and photographs. ....                                                                                                                                                                                                | 26 |
| Section 22. Section 41-5-305, MCA, is amended to read:                                                                                                                                                                                                       |    |
| "41-5-305. Criteria for placement of youth in secure detention facilities, <u>youth</u><br><u>assessment placements,</u> or shelter care facilities. ....                                                                                                    | 27 |
| Section 23. Section 41-5-306, MCA, is amended to read:                                                                                                                                                                                                       |    |
| "41-5-306. Place of shelter care, <u>youth assessment,</u> or detention. ....                                                                                                                                                                                | 28 |
| Section 24. Section 41-5-401, MCA, is amended to read:                                                                                                                                                                                                       |    |
| "41-5-401. Consent adjustment without petition. ....                                                                                                                                                                                                         | 29 |
| Section 25. Section 41-5-403, MCA, is amended to read:                                                                                                                                                                                                       |    |
| "41-5-403. Disposition permitted under informal adjustment -- contributions by<br>parents or guardians for youth's care. ....                                                                                                                                | 30 |
| Section 26. Section 41-5-501, MCA, is amended to read:                                                                                                                                                                                                       |    |
| "41-5-501. Petition -- form and content. ....                                                                                                                                                                                                                | 32 |
| Section 27. Section 41-5-511, MCA, is amended to read:                                                                                                                                                                                                       |    |
| "41-5-511. Right to counsel. ....                                                                                                                                                                                                                            | 33 |

|                                                                                            |           |
|--------------------------------------------------------------------------------------------|-----------|
| Section 46. Section 41-5-605, MCA, is amended to read:                                     |           |
| <b>"41-5-605. Youth court records -- public record. . . . .</b>                            | <b>50</b> |
| Section 47. Section 41-5-802, MCA, is amended to read:                                     |           |
| <b>"41-5-802. Shelter care facilities. . . . .</b>                                         | <b>51</b> |
| Section 48. Section 41-5-1004, MCA, is amended to read:                                    |           |
| <b>"41-5-1004. Distribution of grants -- limitation of funding -- restrictions on use.</b> | <b>51</b> |
| Section 49. Section 41-5-1008, MCA, is amended to read:                                    |           |
| <b>"41-5-1008. Rulemaking authority. . . . .</b>                                           | <b>52</b> |
| Section 50. Section 41-5-1104, MCA, is amended to read:                                    |           |
| <b>"41-5-1104. Disposition in extended jurisdiction prosecutions. . . . .</b>              | <b>52</b> |
| Section 51. Section 41-5-1105, MCA, is amended to read:                                    |           |
| <b>"41-5-1105. Execution of adult sentence -- exception -- transfer to district court</b>  | <b>53</b> |
| Section 52. Section 45-5-624, MCA, is amended to read:                                     |           |
| <b>"45-5-624. Unlawful attempt to purchase or possession of an intoxicating</b>            |           |
| <b>substance -- interference with sentence or court order. . . . .</b>                     | <b>53</b> |
| Section 53. Section 45-5-637, MCA, is amended to read:                                     |           |
| <b>"45-5-637. Tobacco possession or consumption by persons under 18 years of age</b>       |           |
| <b>prohibited -- penalties. . . . .</b>                                                    | <b>56</b> |
| Section 54. Section 46-18-256, MCA, is amended to read:                                    |           |
| <b>"46-18-256. Sexually transmitted disease testing -- test procedure. . . . .</b>         | <b>56</b> |
| Section 55. Section 46-24-207, MCA, is amended to read:                                    |           |
| <b>"46-24-207. Victims and witnesses of juvenile felony offenses -- consultation --</b>    |           |
| <b>notification of proceedings. . . . .</b>                                                | <b>57</b> |
| Section 56. Section 52-2-211, MCA, is amended to read:                                     |           |
| <b>"52-2-211. County interdisciplinary child information team. . . . .</b>                 | <b>58</b> |
| Section 57. Section 52-5-101, MCA, is amended to read:                                     |           |
| <b>"52-5-101. Establishment of state youth correctional facilities -- prohibitions.</b>    | <b>59</b> |
| Section 58. Section 53-1-201, MCA, is amended to read:                                     |           |
| <b>"53-1-201. Purpose of department of corrections. . . . .</b>                            | <b>60</b> |
| Section 59. Section 53-1-203, MCA, is amended to read:                                     |           |
| <b>"53-1-203. Powers and duties of department of corrections. . . . .</b>                  | <b>60</b> |
| SECTION 60. DESIGNATION OF ASSESSMENT OFFICERS -- QUALIFICATIONS --                        |           |
| <b>SALARY -- DUTIES. . . . .</b>                                                           | <b>62</b> |

Section 28. Section 41-5-515, MCA, is amended to read:

**"41-5-515. ~~Persons to be advised of rights~~ Rights and obligations -- persons to be advised -- contempt. . . . . . 33**

Section 29. Section 41-5-521, MCA, is amended to read:

**"41-5-521. Adjudicatory hearing. . . . . 34**

Section 30. Section 41-5-522, MCA, is amended to read:

**"41-5-522. Dispositional hearing -- contributions by parents or guardians for expenses. . . . . . 35**

**Section 31. Restitution. . . . . 36**

Section 32. Section 41-5-523, MCA, is amended to read:

**"41-5-523. Disposition of youth in need of intervention or youth who violate informal consent adjustments ~~sentence to correctional facility~~ ~~commitment to department~~ ~~placement and evaluation of youth~~ ~~restrictions.~~ . . . . . 37**

**Section 33. Disposition -- delinquent youth -- restrictions. . . . . 42**

**Section 34. Disposition -- commitment to department -- restrictions on placement. . . . . 43**

**Section 35. Disposition -- finding of mentally ill or seriously mentally ill -- rights -- limitation on placement. . . . . 43**

**Section 36. Disposition -- commitment to department -- supervision. . . . . 44**

**Section 37. Disposition -- commitment to department -- transfer of records. . . . . 44**

**Section 38. Disposition -- medical or psychological evaluation of youth. . . . . 44**

**Section 39. Modification of court orders -- notice to department -- hearing. . . . . 45**

**Section 40. Contribution for costs -- order for contribution -- exceptions -- collection. . . . . 45**

Section 41. Section 41-5-524, MCA, is amended to read:

**"41-5-524. Consent decree with petition. . . . . 46**

Section 42. Section 41-5-525, MCA, is amended to read:

**"41-5-525. Youth placement committees -- composition. . . . . 48**

Section 43. Section 41-5-530, MCA, is amended to read:

**"41-5-530. Parental contributions account -- allocation of proceeds. . . . . 49**

Section 44. Section 41-5-533, MCA, is amended to read:

**"41-5-533. Probation revocation -- disposition. . . . . 49**

Section 45. Section 41-5-603, MCA, is amended to read:

**"41-5-603. Youth court and department records. . . . . 49**

|                                                             |           |
|-------------------------------------------------------------|-----------|
| <b>Section 61. Repealer. . . . .</b>                        | <b>62</b> |
| <b>Section 62. Funding coordination. . . . .</b>            | <b>62</b> |
| <b>Section 63. Directions to code commissioner. . . . .</b> | <b>62</b> |
| <b>Section 64. Codification instruction. . . . .</b>        | <b>62</b> |
| <b>SECTION 65. COORDINATION INSTRUCTION. . . . .</b>        | <b>63</b> |
| <b>SECTION 35. . . . .</b>                                  | <b>63</b> |
| <b>Section 66. Saving clause. . . . .</b>                   | <b>63</b> |
| <b>SECTION 67. SEVERABILITY. . . . .</b>                    | <b>63</b> |
| <b>Section 68. Effective date. . . . .</b>                  | <b>63</b> |

Amendments to Senate Bill No. 48  
Third Reading Copy

Requested by Representatives Johnson, Wyatt, and McGee  
For the Committee on Corrections

Prepared by Susan Byorth Fox  
March 4, 1997

1. Title, page 1, line 8.  
Strike: "PLACEMENTS,"

2. Title, page 1, line 9.  
Strike: "FAMILY"  
Insert: "CENTERS, YOUTH"

3. Title, page 1, line 10.  
Strike: "AND THE FAMILY OF A Y"

4. Title, page 1, line 12.  
Strike: "PLACEMENTS"  
Insert: "CENTERS"  
Following: "TRUANCY", "  
Insert: "RUNNING AWAY FROM HOME", "

5. Title, page 1, line 13.  
Following: "TERMS;"  
Insert: "CHANGING THE TERM "AFTERCARE" TO "PAROLE";"

6. Title, page 1, line 17.  
Following: "OFFENSES;"  
Insert: "REQUIRING A COUNTY ATTORNEY TO MAKE A MOTION FOR A LEAVE  
TO FILE AN INFORMATION DIRECTLY INTO DISTRICT COURT FOR A  
YOUTH 17 YEARS OF AGE WHO COMMITS A TRANSFERABLE OFFENSE;"

7. Title, page 1, line 19.  
Strike: "PLACEMENTS"  
Insert: "CENTERS"

8. Title, page 1, line 20.  
Following: "DISPOSITION;"  
Insert: "ALLOWING FINGERPRINTS OR PHOTOGRAPHS OF ANY YOUTH FOR  
WHICH A PETITION ALLEGING DELINQUENCY HAS BEEN FILED;"  
Strike: "PLACEMENT IN"  
Following: "ASSESSMENT;"  
Insert: "PROVIDING FOR SPECIFIC INFORMATION GATHERING BY JUVENILE  
PROBATION OFFICERS;"

9. Title, page 1, line 21.  
Following: "STATUTES;"  
Insert: "GENERALLY REORGANIZING PARENTAL CONTRIBUTIONS STATUTES;  
ALLOWING MEDIATION AS A DISPOSITION;"

10. Title, page 1, line 23.  
Following: "EACH"

Exhibit # 2 17 pages  
Amendments to Bill 48 as requested  
The full exhibit is available from: by  
MT Historical Society Archives Johnson,  
225 North Roberts Wyatt,  
P.O. Box 201201 + McGee  
Helena, MT 59620-1201  
Phone # (406)444-4774



Amendments to Senate Bill No. 48  
Third Reading Copy

EXHIBIT 3  
DATE 3/10/97  
SB 48

Requested by Representative Molnar  
For the House Committee on Corrections

Prepared by Eddy McClure  
March 10, 1997

1. Page 15, line 23.

Following: "property,"

Strike: "or"

Following: "drugs"

Insert: "or a youth who has committed three misdemeanors in a 12-month period"

2. Page 30, line 3.

Strike: "The"

Insert: "One of the"

Strike: "may"

Insert: "must"

3. Page 30, line 4.

Following: "(a)"

Insert: "court-enforced"

4. Page 34, line 12.

Following: "so."

Insert: "The youth court authorities are obligated to assist parents in implementing and enforcing interventions and consequences to modify the youth's behavior."

EXHIBIT 4  
 DATE 3/19/17  
 BY 48

**CURRENT LAW**  
 Mont. Code Ann. § 45-4-624  
**MIP AND .02 PENALTIES**

**UNDER AGE 18**

**18 AND OVER**

| <u>Non-driving</u>                                        | <u>Driving</u>                                                  | <u>Non-driving</u>    | <u>Driving</u>                                                                                                     |
|-----------------------------------------------------------|-----------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------|
| <b>1st Offense:</b>                                       |                                                                 | <b>1st Offense:</b>   |                                                                                                                    |
| \$100 or less                                             | \$100 or less<br>30-90 day license<br>confiscation              | \$50 or less          | \$50 or less                                                                                                       |
| <b>2nd Offense:</b>                                       |                                                                 | <b>2nd Offense:</b>   |                                                                                                                    |
| \$200 or less<br>60-90 day license<br>suspension**        | \$200 or less<br>60-90 day license<br>suspension*               | \$100 or less         | \$100 or less<br>60-90 day license<br>suspension*                                                                  |
| <b>3rd + Offense:</b>                                     |                                                                 | <b>3rd + Offense:</b> |                                                                                                                    |
| \$100 - \$500<br>120 day to 1 year<br>license suspension* | \$500 - \$500<br>1 year or until age 18<br>license revocation** | \$200 or less         | \$200 or less<br>120 days license<br>suspension, ACT,<br>treatment if ordered,<br>incarceration 6 weeks<br>or less |

\* Probationary license may be issued as soon as suspension is entered on DCLMVD records unless court orders otherwise.

\*\* No probationary license for at least 3 months; retest required; SR-22 filing required for next 3 years.

All violators may be ordered to perform community service if community service program is available.

All violators under age 18 may be ordered to complete and pay all costs of participation in community-based substance abuse information course, if one is available.



## HOUSE STANDING COMMITTEE REPORT

March 11, 1997

Page 1 of 23

Mr. Speaker: We, the committee on Select Committee on Corrections report that Senate Bill 48 (third reading copy -- blue) be concurred in as amended.

Signed: \_\_\_\_\_

*Ernest Bergsagel*  
Ernest Bergsagel, Chair

And, that such amendments read:

Carried by: Rep. <sup>R.</sup>Johnson

1. Title, page 1, line 8.  
Strike: "PLACEMENTS,"

2. Title, page 1, line 9.  
Strike: "FAMILY"  
Insert: "CENTERS, YOUTH"

3. Title, page 1, line 10.  
Strike: "AND THE FAMILY OF A YOUTH"

4. Title, page 1, line 12.  
Strike: "PLACEMENTS"  
Insert: "CENTERS"  
Following: "TRUANCY", "  
Insert: "RUNNING AWAY FROM HOME", "

5. Title, page 1, line 13.  
Following: "TERMS;"  
Insert: "CHANGING THE TERM "AFTERCARE" TO "PAROLE";"

6. Title, page 1, line 17.  
Following: "OFFENSES;"  
Insert: "REQUIRING A COUNTY ATTORNEY TO MAKE A MOTION FOR A LEAVE  
TO FILE AN INFORMATION DIRECTLY INTO DISTRICT COURT FOR A  
YOUTH 17 YEARS OF AGE WHO COMMITS A TRANSFERABLE OFFENSE;"

*3/11/97*

Committee Vote:  
Yes 12, No 0.

531135SC.Hgd

7. Title, page 1, line 19.

Strike: "PLACEMENTS"

Insert: "CENTERS"

8. Title, page 1, line 20.

Following: "DISPOSITION;"

Insert: "ALLOWING FINGERPRINTS OR PHOTOGRAPHS OF ANY YOUTH FOR  
WHICH A PETITION ALLEGING DELINQUENCY HAS BEEN FILED;"

Strike: "PLACEMENT IN"

Following: "ASSESSMENT;"

Insert: "PROVIDING FOR SPECIFIC INFORMATION GATHERING BY JUVENILE  
PROBATION OFFICERS;"

9. Title, page 1, line 21.

Following: "STATUTES;"

Insert: "GENERALLY REORGANIZING PARENTAL CONTRIBUTIONS STATUTES;  
ALLOWING MEDIATION AS A DISPOSITION;"

10. Title, page 1, line 22.

Strike: "AN INFORMAL"

Insert: "A"

11. Title, page 1, line 23.

Following: "EACH"

Insert: "AND FOR THREE OR MORE MISDEMEANORS"

12. Title, page 1, line 24.

Strike: "PARENTS AND GUARDIANS"

Insert: "YOUTH"

13. Title, page 1, line 27.

Following: "ADVISED OF"

Insert: "CERTAIN RIGHTS AND"

Following: "ACT;"

Insert: "CLARIFYING JURY TRIAL PROVISIONS;"

14. Title, page 2, line 1.

Following: "CHILD;"

Insert: "ALLOWING SHELTER CARE FACILITIES TO BE ALTERNATIVE  
EDUCATION SITES; CLARIFYING THE ABILITY OF SCHOOL DISTRICTS  
TO SHARE INFORMATION ACCORDING TO FEDERAL LAW; AMENDING THE  
MAXIMUM AGE OF COMMITMENT TO THE DEPARTMENT OF CORRECTIONS  
TO YOUTH UNDER 18 YEARS OF AGE; ALLOWING PUBLICATION OF  
INFORMATION ON CERTAIN YOUTH FOR PURPOSES OF RETURNING A  
YOUTH TO A FACILITY AND FOR PUBLIC SAFETY; ALLOWING  
DETENTION FOR YOUTH WHO ESCAPE FROM DEPARTMENT OF  
CORRECTIONS FACILITIES OR PROGRAMS; AMENDING THE PAROLE

VIOLATION HEARINGS AND APPEAL PROCESS;"

15. Title, page 2, line 3.  
Following: "41-3-1103,"  
Insert: "41-3-1104,"

16. Title, page 2, line 7.  
Following: "52-5-101,"  
Insert: "52-5-102, 52-5-103, 52-5-107, 52-5-111, 52-5-113, 52-5-126, 52-5-127, 52-5-128, 52-5-129,"

17. Page 9, line 12.  
Strike: "placement"  
Insert: "center"

18. Page 9, lines 16, 25, and 28.  
Strike: "placements" in three places  
Insert: "centers"

19. Page 10, line 24.  
Following: line 23  
Insert: "

Section 9. Section 41-3-1104, MCA, is amended to read:  
"41-3-1104. ~~Aftercare~~ Youth facilities. The department of corrections may establish, maintain, and administer youth correctional facilities, evaluation facilities, mental health facilities and services, ~~aftercare~~ parole programs, and ~~aftercare~~ parole facilities for the care, custody, and treatment of youth who have been committed to the department of corrections."  
Renumber: subsequent sections

20. Page 12, line 20.  
Strike: "representative"  
Insert: "administrator or designee"

21. Page 13, line 19 through 23.  
Strike: lines 19 through 23  
Renumber: subsequent subsections

22. Page 13, line 25.  
Strike: "33 through 40"  
Insert: "34 through 41"

23. Page 14, line 4.  
Following: "semester"  
Insert: "or absences without prior written approval of a parent or a guardian"

24. Page 14, line 13.

Following: "arrest"

Insert: "but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31"

25. Page 15.

Following: line 15

Insert: "(26). \"Running away from home\" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth."

26. Page 15, line 18.

Following: "contempt of court"

Insert: ", violation of a parole agreement,"

27. Page 16, line 1.

Strike: "placement"

Insert: "center"

28. Page 16, line 11.

Strike: "(35)(a)"

Insert: "(34)(a)"

29. Page 16, lines 15 through 18.

Strike: lines 15 through 18

Insert: " (36) \"Youth assessment\" means a multidisciplinary assessment of a youth as provided in 41-5-301.

(37) \"Youth assessment center\" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior."

Renumber: subsequent subsections

30. Page 16, line 28.

Following: "contempt of court"

Insert: ", violation of a parole agreement,"

31. Page 17, lines 3 and 4.

Following: "beverages"

Strike: remainder of line 3 through "gambling" on line 4

32. Page 20.

Following: line 29

Insert: "(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed a transferable offense.

(3) The district court shall grant leave to file the information if the court finds that there is probable cause to believe that the youth has committed the alleged offense and that, considering the seriousness of the offense and in the interests of community protection, the case should be filed in the district court."

Renumber: subsequent subsections

33. Page 21, line 16.

Strike: "the"

Insert: "a"

Following: "prison"

Insert: "facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq"

34. Page 22, line 30.

Strike: "33"

Insert: "34"

35. Page 23, line 26.

Following: "agency"

Insert: ";

(d) perform a youth assessment if:

(i) a youth has been referred to the youth court as an alleged youth in need of intervention with a minimum of two misdemeanor offenses or three offenses that would not be offenses if the youth were an adult in the past year; or

(ii) the youth or the youth's parent or guardian requests the youth assessment and both the youth and the parent or guardian are willing to cooperate with the assessment process.

(3) A youth assessment:

(a) must be a multidisciplinary effort that may include, but is not limited to a chemical dependency evaluation of the youth, an educational assessment of the youth, an evaluation to determine if the youth has mental health needs, or an assessment of the need for any family-based services or other services provided by the department of public health and human services or other state and local agencies. The education component of the youth assessment is intended to address attendance, behavior, and performance issues of the youth. The education component is not

intended to interfere with the right to attend a nonpublic or home school that complies with 20-5-109.

(b) must include a summary of the family's strengths and needs as they relate to addressing the youth's behavior;

(c) may occur in a youth's home, with or without electronic monitoring, or pursuant to 41-5-305 in a youth assessment center licensed by the department of public health and human services or in any other entity licensed by the department of public health and human services. The county shall provide adequate security in other licensed entities through provision of additional staff or electronic monitoring. The staff provided by the county must meet licensing requirements applicable to the licensed entity in which the youth is being held.

(4) The assessment officer arranging the youth assessment shall work with the parent or guardian of the youth to coordinate the performance of the various parts of the assessment with any providers that may already be working with the family or providers that are chosen by the family to the extent possible to meet the goals of the Youth Court Act."

Renumber: subsequent subsections

36. Page 24, line 4.

Following: "detention,"

Insert: "a"

Strike: "placement"

Insert: "center"

37. Page 24, line 5.

Following: "detention,"

Insert: "a"

Strike: "placement"

Insert: "center"

38. Page 24.

Following: line 6

Insert: "(b) The juvenile probation officer shall collect the following information regarding a youth:

(i) biographical data;

(ii) a description of prior and current offenses, including criminal history;

(iii) a listing of known or suspected associates;

(iv) any gang or drug involvement;

(v) field investigation data;

(vi) motor vehicle ownership and offense data, if any;

(vii) whether the youth is a suspect in other criminal investigations;

(viii) history of any victimization of others by the youth;

(ix) the youth's status offense history;



(x) existence of active warrants;  
(xi) school, employment, and family histories;  
(xii) social and medical services histories;  
(xiii) prior conduct in a youth detention or correctional facility, if any."  
Renumber: subsequent subsections

39. Page 24, line 29.

Following: "or"

Insert: "a"

Strike: "placement"

Insert: "center"

40. Page 26, line 17.

Strike: "placement"

Insert: "center"

41. Page 26, line 30 through page 27, line 1.

Following: "filed"

Strike: remainder of page 26, line 30 through "felony" on page 27, line 1

42. Page 27, line 8.

Strike: "placements"

Insert: "centers"

43. Page 27, line 13.

Strike: "an aftercare"

Insert: "a parole"

44. Page 28, line 2.

Strike: "placement"

Insert: "center"

45. Page 28, line 6.

Strike: "and the youth's family's"

46. Page 28, line 26.

Strike: "placement"

Insert: "center"

47. Page 29, line 9.

Strike: "an informal"

Insert: "a consent"

48. Page 29, line 30.

Following: "adult"

Insert: "or third or subsequent offense if that offense would be

a misdemeanor if committed by an adult"

49. Page 30, lines 2 and 3.

Strike: "informal" on line 2 and line 3

Insert: "consent" in both places

Following: "adjustment"

Strike: "--" on line 2 through "care" on line 3

50. Page 30, line 9.

Strike: "31"

Insert: "32"

51. Page 30, line 13.

Strike: the second "placement"

Insert: "center"

52. Page 30, lines 18 and 22.

Strike: "or the youth's parents or guardians" in both places

53. Page 30, line 26.

Following: "LIMITED TO"

Strike: "FAMILY"

Insert: "mediation or youth"

54. Page 30, line 27.

Following: line 26

Strike: the first "FAMILY"

Insert: "youth"

55. Page 30, lines 28 and 30.

Strike: "FAMILY"

Insert: "youth"

56. Page 31, line 10.

Following: "violates"

Strike: "an aftercare"

Insert: "a parole"

57. Page 31, line 18 through page 32, line 21.

Strike: subsections (4) through (6) in their entirety

58. Page 33, line 10.

Following: "detention,"

Insert: "a"

Strike: "placement"

Insert: "center"

59. Page 33, line 11.

Following: "detention,"  
Insert: "a"  
Strike: "placement"  
Insert: "center"

60. Page 34, line 5.  
Following: "obligations"  
Insert: ", including possible assessments and related costs,"

61. Page 34, line 13.  
Strike: "PLACEMENT"

62. Page 34.  
Following: line 29  
Insert: "(3) Prior to an adjudicatory hearing before a jury, the  
court shall conduct an omnibus hearing in accordance with  
46-13-110.  
(4) The jury trial must be conducted in accordance with  
Title 46, chapter 16."  
Renumber: subsequent subsections

63. Page 35, line 19.  
Strike: "33"  
Insert: "34"

64. Page 35, lines 20 and 21.  
Strike: "social" on line 20 through "assessment," on line 21  
Insert: "youth assessment"

65. Page 35, line 21.  
Following: "officer"  
Insert: "or an assessment officer"

66. Page 35, line 23.  
Following: "case"  
Insert: ", including a statement by the victim or the victim's  
family"

67. Page 35, line 24.  
Page 35, line 27.  
Strike: "social summary, family assessment,"  
Insert: "youth assessment"

68. Page 35, lines 28 and 29.  
Strike: "social" on line 28 through "assessment," on line 29  
Insert: "youth assessment"

69. Page 36, line 1.

Strike: "social summary, family assessment,"  
Insert: "youth assessment"

70. Page 36, lines 3 and 4.  
Strike: "(3), (4), and (5) of"  
Following: "41-5-521" on line 4  
Insert: "(5) through (7)"

71. Page 36, line 5.  
Following: "youth"  
Insert: ", the victim,"

72. Page 36, lines 5 and 6.  
Strike: "social summary, family assessment,"  
Insert: "youth assessment"

73. Page 36, line 30.  
Strike: "or a youth's parents or guardians"

74. Page 37, lines 20 and 23.  
Strike: "an in-state" in both places  
Insert: "a"

75. Page 37, line 25.  
Following: "department--"  
Insert: "for the purposes of funding a private, out-of-home,  
residential placement"

76. Page 38, line 10.  
Strike: "the youth's parents or guardians"  
Insert: "by the person that contributed to the delinquency of the  
youth"

77. Page 38, line 25.  
Strike: "35"  
Insert: "36"

78. Page 39, lines 5 and 9.  
Strike: "or the youth's parents or guardians" in both places

79. Page 39, line 23.  
Strike: the second "placement"  
Insert: "center"  
Strike: ".\_"  
Insert: ";

80. Page 39.

Following: line 23

Insert: "(16) order the youth to participate in mediation that  
is appropriate for the offense committed."

81. Page 42, line 19.

Strike: "34(1)"

Insert: "35(1)"

Strike: "35(2)"

Insert: "36(2)"

82. Page 43, line 11.

Strike: "into"

Insert: "or"

Strike: "appropriate"

Insert: "alternative"

83. Page 43, line 14.

Strike: "successful"

84. Page 43, line 25.

Strike: "an aftercare"

Insert: "a parole"

85. Page 44, line 11.

Strike: "an aftercare"

Insert: "a parole"

86. Page 44, line 12.

Strike: "other"

Insert: "private, out-of-home, residential"

Strike: "the department,"

Following: "court"

Strike: ", "

87. Page 44, line 14.

Following: "41-5-205"

Insert: ", "

Following: "department"

Insert: "for purposes of funding a private, out-of-home,  
residential placement"

88. Page 44, line 21.

Following: "youth"

Insert: "while in a private, out-of-home, residential placement  
and upon release until discharged by the department"

89. Page 44, line 25.

Strike: "family"

Insert: "youth"

90. Page 45, line 20.

Following: "is"

Insert: "placed in substitute care, a youth assessment center, or detention requiring payment by any state or local government agency or"

91. Page 45, line 23.

Strike: "commitment"

Insert: "custody"

92. Page 45, line 25.

Following: line 24

Insert: "(2) If the court determines that a youth's parents or guardians are financially able to pay a contribution for adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, or supervision as provided in subsection (1), the court shall order the youth's parents or guardians to pay a specified amount. The order must state to which state or local government agency all or a part of the contribution is due and in what order the payments must be made."

Renumber: subsequent subsections

93. Page 45, line 29.

Strike: "(3) (b)"

Insert: "(4) (b)"

Strike: "this section"

Insert: "subsection (3)"

94. Page 46, line 22.

Strike: "(2)"

Insert: "(3)"

95. Page 48, line 2.

Following: "adult"

Insert: "or third or subsequent offense if that offense would be a misdemeanor if committed by an adult"

96. Page 48, line 29.

Following: "representative of"

Strike: "a"

Insert: "the"

Following: "district"

Insert: "within the boundaries of which the youth is recommended"

to be placed and will be attending school"

97. Page 48, line 30.

Strike: "child"

Insert: "youth"

98. Page 49, line 5.

Strike: "or"

Following: "41-5-524"

Insert: ", or [section 40]"

Strike: "placement"

Insert: "custody"

99. Page 50, line 3.

Strike: "family"

Insert: "youth"

100. Page 51.

Following: line 16

Insert: "(7) A shelter care facility may permit a school district to use the facility as an alternative education site provided that the school district provides the educational program and personnel necessary to instruct the youth. Public schools shall follow the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making education placement decisions for youth with disabilities."

101. Page 52, line 8.

Strike: "38"

Insert: "39"

102. Page 52, lines 19 and 26.

Strike: "33" in both places

Insert: "34"

103. Page 53, line 15.

Strike: "(4) and (5)"

Insert: "(6) and (7)"

104. Page 59.

Following: line 23

Insert: "(7) To the extent that the county interdisciplinary child information team is involved in a proceeding that is held prior to adjudication of a youth in youth court, the team satisfies the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release

education records to the team. The terms of the written agreement described in subsection (5) must include a requirement that the officials and authorities to whom the information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent or guardian of the student."

105. Page 59, line 28.

Following: "properly"

Strike: "diagnose" through "rehabilitate"

Insert: "provide custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development for"

106. Page 59, line 29.

Strike: "19"

Insert: "18"

107. Page 60, line 4.

Following: line 3

Insert: "

**Section 59.** Section 52-5-102, MCA, is amended to read:

**"52-5-102. Control and management of youth correctional facilities.** The facilities provided for in 52-5-101 shall exercise their functions under the supervision and general management of the department of corrections. Except where otherwise provided by law, the department by rules shall establish standards of care and policies of admission, transfers, discharge, and ~~aftercare~~ parole supervision in order to provide adequate care for children and adequate service to the courts. Policies of admission may include criteria for medical examinations required under 52-5-108. The department shall develop special programs within each facility ~~which~~ that are adaptable to the particular needs of its operation."

**Section 60.** Section 52-5-103, MCA, is amended to read:

**"52-5-103. Cooperative agreements for services with governing body of Indian tribe.** (1) The department of corrections may enter into agreements with the governing body of an Indian tribe within the state for residential, educational, evaluation, and ~~aftercare~~ parole services maintained by the department for children who have been adjudicated delinquent by the tribal court, subject to the provisions of this part and parts 1 and 2 of Title 53, chapter 1.

(2) Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter 11."



**Section 61.** Section 52-5-107, MCA, is amended to read:

**"52-5-107. Maximum age of commitment.** A child youth who has attained ~~the age of 18 years of age~~ may not be committed by any youth court to the department of corrections, ~~except,~~ however, that any person under 19 years who prior to attaining the age of 18 years came under the jurisdiction of the youth court by reason of delinquent conduct and whose adjudication of delinquency is not made until after the child reaches the age of 18 years may be committed to the department of corrections."

**Section 62.** Section 52-5-111, MCA, is amended to read:

**"52-5-111. Commutation of sentence to state prison facility and transfer of prisoner to youth correctional facility.**

(1) Upon the application of a person ~~under 19 years of age~~ who has not attained 18 years of age who has been sentenced to ~~the a~~ a state prison facility or upon the application of the youth's parents or guardian, the governor may, after consulting with the department of corrections and with the approval of the board of pardons and parole, commute the sentence by committing the person who may benefit from programs offered at a youth correctional facility to the department of corrections until the youth is ~~19~~ 18 years of age or until sooner placed or discharged.

(2) If the ~~person's~~ youth's behavior after being committed to the department of corrections indicates that the youth is not a proper person to reside at one of the youth correctional facilities, the governor, after consulting with the department of corrections and with the approval of the board of pardons and parole, may revoke the commutation and return the youth to ~~the a~~ a state prison facility to serve out the youth's unexpired term, and the time spent by the youth at one of the youth correctional facilities or while a refugee from one of the youth correctional facilities is not considered as a part of the youth's original sentence.

(3) Upon recommendation of the warden and with the approval of the department of corrections, a person ~~under 19~~ 18 years of age who has been sentenced to ~~the a~~ a state prison facility and who may benefit from programs offered at a youth correctional facility may be transferred to any youth correctional facility under the jurisdiction and control of the department of corrections.

(4) If the ~~person's~~ youth's behavior after transfer to a youth correctional facility indicates that the youth might be released on parole or that the youth's sentence might be commuted and the youth be discharged from custody, the superintendent of the facility, with the approval of the department of corrections, may make an appropriate recommendation to the board of pardons and parole and the governor, who may in their discretion parole the person or commute the youth's sentence.

(5) If the ~~person's~~ youth's behavior after transfer to a youth correctional facility indicates that the youth is not a proper person to reside in the facility, upon recommendation of the superintendent and with the approval of the department of corrections, the youth must be returned to ~~the~~ a state prison facility to serve out the unexpired term."

Section 63. Section 52-5-113, MCA, is amended to read:

"52-5-113. ~~Apprehension and Publication of information to facilitate~~ return of youth leaving a state youth correctional facility or program without permission. A youth who has left a youth correctional facility of the department of corrections without permission may be apprehended and returned by any citizen. The term "youth correctional facility of the department" means any facility under the supervision and control of the department of corrections that has as its primary function the care, training, custody, and control of youth and specifically includes the Pine Hills school for boys and the Mountain View school for girls. The department may publish the name and picture of and the offense and other information relating to a youth who has left a state youth correctional facility or program operated by the department or who is committed to the department and who presents a threat to public safety if the publication is determined by the department to be necessary to facilitate the youth's return and to protect the public."

Section 64. Section 52-5-126, MCA, is amended to read:

"52-5-126. ~~Youth aftercare~~ parole agreement. (1) A youth released by the department of corrections from one of the state youth correctional facilities to the supervision, custody, and control of the department shall, before the youth's release, sign ~~an aftercare~~ a parole agreement containing:

(a) a statement of the terms and conditions of the release, including a list of the acts that, if committed by the youth, may result in a return to the facility; and

(b) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in 52-5-129 before being returned to the facility.

(2) A youth released from a state youth correctional facility for commitment to a mental health facility pursuant to Title 53, chapter 21, part 1, shall sign ~~an aftercare~~ a parole agreement that will remain in effect until the department no longer has custody of the youth."

Section 65. Section 52-5-127, MCA, is amended to read:

"52-5-127. Control over youth released under aftercare parole agreement. The department of corrections has control over

a youth released pursuant to a parole agreement under 52-5-126 until the youth attains ~~the age of 19~~ 18 years of age unless the youth is discharged by the department before age ~~19~~ 18. However, the youth is subject to the continuing jurisdiction of the youth courts of Montana, pursuant to 41-5-205, for acts committed by the youth while under the control of the department."

Section 66. Section 52-5-128, MCA, is amended to read:

"52-5-128. **Detention of youth who violates aftercare parole agreement**. A youth who violates the terms and conditions of the youth's aftercare parole agreement or who escapes from a state youth correctional facility or program operated by the department may be detained by the department ~~of corrections~~ or by a law officer of the state, county, or city of the state upon ~~certificates~~ notice in writing to the officer by the department to the effect that the youth has violated the terms and conditions of the youth's aftercare parole agreement or has escaped from a state youth correctional facility or program operated by the department."

Section 67. Section 52-5-129, MCA, is amended to read:

"52-5-129. **Hearing on alleged violation of aftercare parole agreement -- right to appeal outcome.** (1) When it is alleged by an ~~aftercare counselor~~ a juvenile parole officer that a youth has violated the terms of the youth's aftercare parole agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. At the discretion of the hearings officer, this hearing may be held by means of interactive video transmission. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that the youth should be returned to the youth correctional facility from which the youth was released or whether a different plan for treatment custody and supervision of the youth should be pursued by the department of corrections.

(2) The youth, upon advice of an attorney, may waive the right to a hearing.

(3) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of the aftercare parole agreement, including notice of the purpose of the hearing;

(b) disclosure of the evidence against the youth and the facts constituting the alleged violation;

(c) opportunity to be heard in person or by interactive video transmission and to present witnesses and documentary evidence to controvert the evidence against the youth and to show

that there are compelling reasons that justify or mitigate the violation;

(d) opportunity to have the referee subpoena witnesses;  
(e) the right to confront and cross-examine adverse witnesses in person or by means of interactive video transmission;

(f) the right to be represented by an attorney;  
(g) a record of the hearing; and  
(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the referee hearings officer.

(4) ~~The department shall appoint a referee, who may not be an employee of the department, provide a hearings officer to conduct the hearing. In the conduct of the hearing, the department may request the county attorney's assistance as necessary.~~ The department shall adopt rules necessary to effect a prompt and full review.

(5) If the referee hearings officer finds, by a preponderance of the evidence, that the youth did in fact commit the violation, the referee hearings officer shall make a recommendation to the department for the placement of the youth. In making this recommendation, the referee hearings officer may consider mitigating or aggravating circumstances. ~~Final approval rests with the department and must be made within 10 days of the referee's recommendation. The youth or the youth's attorney may appeal the hearings officer's decision to the department director. The appeal must be made in writing within 5 days of the hearing. The department director or designee shall grant or deny the appeal within 5 days of receipt of the appeal.~~

(6) The youth may appeal ~~from the decision at the hearing of the department director~~ to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the ~~department's department director's~~ decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when the youth's detention or care is required to protect the person or property of the youth or of others or the youth may abscond or be removed from the community. The department shall determine the place and manner of detention and is responsible for the cost of

the detention. Procedures for taking into custody and detention of a youth charged with violation of the youth's ~~aftercare~~ parole agreement are as provided in 41-5-303, 41-5-306, 41-5-311, and 41-5-314.

(8) If the decision is made to return the youth to the youth correctional facility from which the youth was released and the youth appeals that decision, the youth shall await the outcome of the appeal at the facility.""

Renumber: subsequent sections

108. Page 60, line 10.

Strike: "care, protection, and mental and physical development"

Insert: "custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development"

109. Page 61, line 6.

Strike: "aftercare"

Insert: "parole"

110. Page 62.

Following: line 11

Insert: "(3) Proceedings under 41-5-301 and 41-5-401 that are held prior to adjudication satisfy the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to assessment officers. The assessment officer is responsible for ensuring that officials and authorities to whom such information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent of the student."

111. Page 62, lines 23 and 25.

Strike: "31 and 33 through 40" in both places

Insert: "32 and 34 through 41"

112. Page 62, lines 28 and 29.

Strike: "60"

Insert: "70"

113. Page 63, line 1.

Following: "INSTRUCTION."

Insert: "(1)"

Strike: "BILL NO. [LC 1131]"

Insert: "House Bill No. 502"

114. Page 63, line 3.

Following: "THEN"

Insert: ":

(a) the section in House Bill No. 502 amending section 41-5-523 is void;

(b) the phrase "seriously mentally ill, as defined in 53-21-102" in this bill must be substituted with "found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1)"; and

(c) "

Strike: "35"

Insert: "36"

115. Page 63, line 4.

Strike: "35"

Insert: "36"

116. Page 63.

Following: line 16

Insert: "(2) If both Senate Bill No. 99 and this bill are passed and approved and if Senate Bill No. 99 includes a section that amends 41-5-206, then that section of Senate Bill No. 99 amending 41-5-206 is void and the amendments to 41-5-205 in this bill are void.

(3) If Senate Bill No. 110 and this bill are both passed and approved, then the sections amending 41-5-403 and 41-5-523 in Senate Bill No. 110 are void and [section 40] of the third reading copy of this bill must read:

**NEW SECTION. Section 40. Contribution for costs -- order for contribution -- exceptions -- collection.** (1) If a youth is placed in substitute care, a youth assessment center, or detention requiring payment by any state or local government agency or committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that youth's parents or guardians are financially able to pay a contribution for adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, or supervision as provided in subsection (1), the court shall order the youth's parents or guardians to pay a specified amount. The order must state to which state or local government agency all or a part of the contribution is due and in what order the payments must be made.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution attributable to care, custody, and treatment as provided in subsection (1), the court shall order the youth's parents or guardians to pay a specified amount or an amount determined by the department of public health and human services. In either case, the amount must be based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(4) A parent's or guardian's liability for contributions begins to accrue from the date the youth is removed from the home and continues until the youth is returned to the parent or guardian, the youth becomes emancipated, or the liability is terminated by order of the court.

(5) (a) A parent or guardian who is ordered to pay a contribution for a youth under subsection (3) assigns to the state agency all rights to a child support order for that youth that are not otherwise assigned under 53-2-613. The assignment of a child support obligation:

(i) is effective for both current and accrued support;  
(ii) takes effect on the date the youth is placed in substitute care; and

(iii) remains in effect for as long as the youth lawfully remains in substitute care and until all arrears that are owed prior to the termination of substitute care are paid.

(b) The assigned child support obligation is in addition to the parent's or guardian's contribution determined under subsection (3) or (9), if applicable.

(c) The assigned child support obligation may be retained by the state agency with financial responsibility for the youth in an amount sufficient to reimburse the costs for the substitute care that remain after the obligation has been satisfied.

(6) (a) Except as provided in subsection (6)(b), contributions ordered under subsection (3) and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding;  
or  
(ii) an alternative arrangement between the state agency and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(7) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the court may modify its order for the payment of contributions required under subsection (2) or (3) or the parent or guardian may apply to the department of public health and human services for an administrative modification for the payment of a contribution required under subsection (3) as provided in Title 40, chapter 5, part 2. A modification for the payment of a contribution required under subsection (3) must be based upon the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(8) (a) If the court orders the payment of contributions under subsection (3) or the department of public health and human services orders the payment of contributions under subsection (9), the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under subsection (3) and the assignment of a child support order, if applicable, by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

(9) Upon a court order for commitment to the department that does not contain an amount of a contribution or a referral by the court for the department of public health and human services to determine an amount of a contribution as provided in subsection (3), the department may refer the matter to the department of public health and human services to determine, establish, and order the youth's parent or guardian to pay the contribution provided for in subsection (3) using the procedure provided in Title 40, chapter 5, part 2, for establishing a child



March 11, 1997  
Page 23 of 23

support order. The department of public health and human services shall provide support enforcement services for contribution orders established under subsection (3)."

-END-

531135SC.Hgd

HOUSE OF REPRESENTATIVES

House Select COMMITTEE ON CORRECTIONS

ROLL CALL

DATE 3/10/97

[illegible]